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# 1980 ANNUAL REPORT TO THE ILLINOIS GENERAL ASSEMBLY

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**R**ULES

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# JOINT COMMITTEE ON ADMINISTRATIVE RULES

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## LETTER OF TRANSMITTAL

Honorable Members of the  
82nd General Assembly

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Ladies and Gentlemen:

I hereby submit the 1980 Annual Report of the Joint Committee on Administrative Rules pursuant to Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.10). As required, it contains the "finding, conclusions, and recommendations including suggested legislation" developed by the Joint Committee in the course of its activities during 1980.

We have made some significant progress towards insuring that the rules and regulations adopted by state agencies accurately and effectively implement the laws passed by the General Assembly. The detailed reviews of agency rules conducted by the Committee provide opportunities for the type of in-depth legislative oversight which state government lacked for too long. The General Assembly, through the Joint Committee, now has a direct means of monitoring the rulemaking actions of state agencies.

The passage of House Bill 2351 (Public Act 81-1514) during the fall of 1980, should make the Joint Committee's review process even more effective in the future. It provides a direct means of actually stopping improper agency rules until they can be considered by the full General Assembly. It essentially allows the Committee to require a "cooling off period," so that the agency and the legislature can get together on the proper interpretation and implementation of the law. We hope to use it only rarely.

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The first results of our five-year review program are also reported in this volume. These results are only the beginning of what we expect this program to generate. Over the next few years, we will be going through each of the 40,000 pages of state agency rules and regulations currently on file with the Secretary of State -- subject by subject -- and making specific recommendations for streamlining, clarifying, eliminating or reconsidering these rules. This report includes a number of recommended legislative changes which have already resulted from the first segments of this review.

In speaking to civic leaders, businessmen, public interest groups, and other members of the public who are concerned about the growing state bureaucracy, I often describe the Joint Committee's function as "draining the regulatory swamp." This report shows that while we are making some progress in that direction, the swamp is a lot bigger than we thought, and it contains a lot more alligators than we thought. Draining the swamp will continue to be a large task.

Our task is much easier when we accurately reflect the opinions of the full General Assembly, so your input during the past year has been invaluable. I hope you will continue to send us your comments on proposed rules and the regulatory problems faced by your constituents; we cannot guarantee solutions, but we can insure that the issues are openly debated and seriously addressed. Your active participation is essential to making this oversight process effective. Each complaint, observation and suggestion you have made, has helped our operation. Keep it up.

Respectfully,

A handwritten signature in dark ink, appearing to read "Pres Bloom", followed by a long horizontal flourish line.

Senator Prescott E. Bloom  
Chairman

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# TABLE OF RECOMMENDED BILLS

	<u>Bill Number</u>	<u>Objection or Discussion/ Pages</u>	<u>Background &amp; Summary/ Pages</u>	<u>Text/ Summary</u>
Procedural Bills	One	112-115	126-128	140-142
	Two	112-115	128	143-144
	Three	112-115	129	145-148
	Four	112-115	129-130	149-152
	Five	112-115	130	153-155
	Six	112-115	131	156-157
Recommended	Seven	112-115	131-132	158-163
Substantive Bills	Eight	112-115	132-133	164-165
Suggested Substantive Bills	Nine	60-61	133-134	166-191
	Ten	62-63	134-135	192-194
	Eleven	64-65	135	195-202
	Twelve	65-66	136	203-215
	Thirteen	92	136-137	216-229
	Fourteen	93	137-138	230-233
	Fifteen	90-91	138	234-236
	Sixteen	92-93	138-139	237-240
	Seventeen	89	139	241-244

## SUMMARY

### Activities

During 1980, the Joint Committee on Administrative Rules reviewed almost 700 proposed, emergency and peremptory rulemakings by state agencies as part of its responsibility under the Administrative Procedure Act to oversee the rulemaking process of state government. The Committee also completed detailed reviews of 28 sets of existing rules and regulations which concerned regulation of occupations and initiated reviews of several other subject groupings of existing rules. In addition to these two major review programs, the Committee also examined each new public act for its possible effect on rulemaking and investigated numerous complaints received from the public about specific agency rules and regulations.

As a result of its on-going review of new and old rules, the Joint Committee issued 55 formal statements of objection. Each of these objections is presented in this report, since they represent the most visible evidence of the Committee's impact on agency rules and regulations. The Joint Committee also encouraged passage of the numerous legislative recommendations included in its 1979 Annual Report, successfully passing a major bill to strengthen the General Assembly's control over improper agency-made law.

The Joint Committee, during 1980, has continued to fulfill its basic function as a specialized oversight and service agency for the Illinois General Assembly.

### Recommendations

The Joint Committee is recommending two types of bills for consideration by the full General Assembly during the coming legislative session: (1) procedural changes to improve and fine-tune the rulemaking requirements of the Administrative Procedure Act, and (2) substantive legislation to address specific issues uncovered by the Committee in its review of specific rules and regulations.

Many of the procedural changes recommended by the Committee are the result of efforts by the National Conference of Commissioners on Uniform State Laws to revise its Model State Administrative Procedure Act. Several of the other recommended procedural

changes, including clarifying the requirements for adoption by reference, are the result of the Committee's experience during the year. Six procedural bills are recommended in this report.

Eleven additional substantives bills are recommended or suggested by the Committee in this report. Each of these bills address individual problems in specific statutes uncovered by the Committee in its review of new rules and existing rules. A number of these bills concerning regulation of specific occupations are a direct result of the Committee's five-year review program. The recommended substantive bills will be introduced by the Committee members, while the suggested bills will be referred to the Chairmen and Minority Spokesmen of the appropriate standing committees of the General Assembly.

## INTRODUCTION

This is the third annual report submitted by the Joint Committee on Administrative Rules to the Illinois General Assembly. It details the activities and recommendations of the Joint Committee during 1980. The detailed statements of objection and recommendations included in this report, including the specific legislation developed by the Committee, indicate the extensive involvement of the Committee in the oversight of the on-going, day-to-day, policy-making activities of state government.

During 1980, the Joint Committee has had a significant effect on the rules and regulations adopted and enforced by state agencies. The first results of the five-year program to review all the existing rules of all state agencies indicate that this program will provide a useful means for systematically evaluating the current rules of the state by subject areas. Although the results of this program are not likely to be as visible, the long-term impact of this type of review may well be more significant than the on-going review of newly proposed rules.

Another less visible result of the Joint Committee's activities during 1980 is a greater awareness by the legislature, state agencies and the public of the importance of the regulatory actions of the state. Agencies seem to have become more aware of the necessity for carefully worded rules which are plainly understandable and also meet the legal requirements of the Administrative Procedure Act and the statute authorizing the rules.

This brief introduction will discuss the basic functions of the Joint Committee, list the Committee's most significant achievements during 1980, and outline the information contained in the other sections of this report.

### Basic Functions

The most basic statement of the function of the Joint Committee is presented in Section 7.04(1) of the Administrative Procedure Act: "The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This statement indicates the two basic directions of the Joint Committee's activities: (1) working with state

agencies to improve rulemaking and rules and (2) promoting public understanding of the rulemaking process and of the rules themselves.

The Joint Committee was created in 1977 in a comprehensive amendment to the Administrative Procedure Act (Public Act 80-1035; House Bill 14). The Administrative Procedure Act had been passed in 1975, but the General Assembly recognized the Act's weaknesses without the existence of a mechanism for systematic oversight of the rulemaking process and direct legislative involvement. The creation of the Joint Committee was an attempt to fill that need for systematic oversight.

The legislature's desire for systematic oversight of state agencies' rulemaking and rules is met by the several interrelated review programs conducted by the Joint Committee. These programs can only be briefly summarized here, but additional details on each of these programs are presented in the various sections of the rest of this report.

**1. Review of Proposed Rulemaking.** Each new rule, amendment to an existing rule and repeal of an existing rule proposed by a state agency is reviewed by the Joint Committee. This review, which must be accomplished within a strict 45-day time period, is primarily intended to insure that new rules are within the agency's statutory authority and are legally proper.

**2. Five-Year Review of Existing Rules.** The Administrative Procedure Act requires the Joint Committee to conduct a systematic review of all the currently effective rules of all state agencies, regardless of when the rules were adopted. This program complements the review of newly proposed rules by providing for an examination of rules which may have been in effect for a long time and may no longer be serving the purpose for which they were intended. The primary purpose of this type of review is to clean up the existing rules and reduce or eliminate areas of conflict or overlap between rules.

**3. Review of Emergency and Peremptory Rulemaking.** To better monitor the rulemaking process, the Joint Committee also reviews emergency and peremptory rules which agencies have adopted in addition to regularly proposed rules. Since emergency and peremptory rules are not required to be published for public comment, the Joint Committee carefully reviews these rules to insure that they comply with the limited conditions specified in the Administrative Procedure Act under which such rules may be

adopted. This review has probably resulted in more limited use of the emergency and peremptory rulemaking processes by state agencies (see Table Five, pages 25-26).

**4. Complaint Reviews.** The Joint Committee frequently receives complaints from the public about specific rules of state agencies. These complaints typically argue that the rule is unauthorized or unreasonable, or has a serious impact on the affected public. Although formal objections based on these complaints are not usually required, the Joint Committee attempts to answer the questions which have been raised about the rule through discussions with the agency and the complainant. This program allows the Committee to focus attention on issues which are of particular concern to the public.

**5. Public Act Review.** To supplement these programs to review agency rules, the Joint Committee also reviews each new public act for its possible effect on rulemaking. The Committee informs agencies when it finds that a new public act may require rulemaking. Then, it monitors the agency's response and actions to adopt the necessary rules. This review is intended to help insure that acts passed by the legislature are implemented properly and translated into rules whenever necessary.

In a broad sense, each of the Joint Committee's programs is intended to facilitate coordination between the legislative and administrative processes in state government. They reflect a growing concern by the legislature that programs and policies be implemented as the legislature intended in the authorizing legislation.

#### Priorities and Achievements in 1980

The programmatic priorities developed by the Joint Committee during 1979 are listed in Table One. The Committee continued to utilize these priorities in 1980. This table also presents the list of priorities initially developed by the Joint Committee in 1977, shortly after the Committee was organized. These lists of priorities indicate the Committee's concern with effectively implementing the programs to review newly proposed rules before initiating the more in-depth reviews required under the five-year review program. Both of these major review programs were fully operational during 1980.

TABLE ONE  
JOINT COMMITTEE PRIORITIES: 1977 AND 1979

**Initial Joint Committee Priorities in 1977**

First Priority

- A. Establish the mechanics and the procedures for reviewing proposed rules during the 45-day notice period for proposed rulemaking.
- B. Develop a working relationship with the Secretary of State's office which must include the:
  - 1. establishment of adequate Rules on Rules;
  - 2. development of daily operational procedures with the Secretary of State's office; and
  - 3. establishment of an index system for the Illinois Register to make it more useable.

Second Priority

- A. Establish a review program for specialized rules that shall include:
  - 1. Internal management rules;
  - 2. Emergency rules; and
  - 3. Federal and court ordered rules.
- B. Establish the procedure and the mechanics for handling and processing complaints the Joint Committee receives concerning a particular rule that currently is in effect.

Third Priority

- A. Establish the five-year review program of each agency's rules as required by the IAPA.
- B. Establish the mechanics and the procedures for reviewing existing rules.
- C. Develop a program to study the rulemaking process of all state agencies.
- D. Begin to examine and develop a statewide indexing and codification system for all the state's administrative rules.
- E. Develop a program to study the impact of legislative changes, court rulings and administrative actions on the rulemaking process and on effective rules.
- F. Work with the Auditor General to establish a system to review state agency compliance with the IAPA.

**Program Priorities of the Joint Committee in 1979**

Highest Priority

Review of proposed rulemaking [Section 7.06]

Second Priority

- Five-year periodic evaluation of all agency rules program [Section 7.08]
- Review of emergency and court and federal ordered rulemaking [Section 5(b) and 5(e), Section 7.07]
- Special reviews of existing rules [Section 7.07, Section 7.05(2)]
- Review of procedural rules [Section 4.01, Section 7.05(1)]

Third Priority

- Review of related legislative changes, court rulings, and administrative action [Section 7.05(3)]
- Compliance activities [Section 7.04(3)]

The most significant achievements of the Joint Committee during this year include the following:

**1. Passage of a Major Bill to Strengthen the Authority of the General Assembly Over Improper Agency Rules.** This major amendment to the Administrative Procedure Act was enacted over the veto of the Governor as Public Act 81-1514 (House Bill 2351). It provides that the Joint Committee can under certain circumstances prohibit the adoption of a proposed rule or suspend the effectiveness of an emergency or peremptory rule until the full General Assembly can consider the rule. The Act became effective January 1, 1981. The Act is discussed in more detail on pages 109 - 111 and a copy of the Act is included as Appendix B(2) in this report.

**2. Completion of the First Subject Area in the Five-Year Review Program.** The Committee completed its review of 28 sets of rules which were classified under the subject area of industry and labor and subarea of regulation of occupations. The results of this review included numerous changes which the agencies agreed to make in their rules, a number of objections to specific rules, several recommendations for agencies to initiate new rulemaking, and several draft bills being suggested for consideration by the General Assembly. A full discussion is located on pages 81 - 97.

**3. Simplification and Codification of the Joint Committee's Operational Rules.** One of the Joint Committee's consistent criticisms of agency rules has been the complexity of the language in which they are written. To improve the readability of its own rules and to codify them in accordance with the codification scheme adopted by the Secretary of State, the Committee undertook a complete revision of its operational rules, which was completed in 1980. These revised rules appear as Appendix C in this report. Related to this achievement is the Committee's recommendation that legislation be enacted to require all agency rules to be written in clear and understandable language (see Bill Two, pages 143-144).

**4. Development of an Effective Method for the Codification and Computerization of all State Agency Rules.** The Joint Committee was instrumental in working with the Rules Division and State Library in the Secretary of State's office and the Legislative Information System to develop a codification scheme and a procedure for editorial corrections and computerization of the text of all state agency rules. This effort included the passage of Public Act 81-1348 (Senate Bill 1822) to provide necessary additional

authority to make this process effective. The adoption of a comprehensive codification scheme and schedule by the Secretary of State was also aided by the Joint Committee's cooperation. This achievement should greatly improve the public accessibility and availability of rules.

**5. Continuation of a Vigorous On-Going Review of New Rules Proposed by State Agencies.** During 1980, the Joint Committee examined almost 700 proposed, emergency and preemptory rules, raising numerous questions with agencies about the legal authority, economic impact and propriety of the rules. Most of these questions were resolved by the agency agreeing to make the appropriate changes, but in a number of instances the Committee issued formal objections to the rules. The balance between cooperation with agencies and vigorous examination of the rules has provided for an effective review procedure, despite the heavy workload and limited time to review each rule.

#### Committee Members and Organization

The members of the Joint Committee are appointed by the legislative leaders and serve for two-year terms. Section 7.02 of the Administrative Procedure Act specifies that members of the Committee are to be appointed or reappointed in July of each odd-numbered year and officers are to be selected by the Committee from its membership following these appointments. Vacancies are filled by appointment by the appropriate official when they occur.

During 1980, no vacancies occurred in the Committee membership. The members who were appointed in 1979 and served on the Committee during 1980 are:

##### **Appointed by the President of the Senate**

Senator Arthur L. Berman (Democrat, 11th District, Evanston)  
Senator Jeremiah E. Joyce (Democrat, 28th District, Chicago)  
Senator George E. Sangmeister (Democrat, 42nd District, Joliet)  
Senator Frank D. Savickas (Democrat, 27th District, Chicago)

##### **Appointed by the Senate Minority Leader**

Senator Prescott E. Bloom (Republican, 46th District, Peoria)  
Senator Lynn Martin (Republican, 34th District, Rockford)  
Senator David J. Regner (Republican, 3rd District, Mt. Prospect)

Senator Richard A. Walsh (Republican, 5th District, Chicago)

**Appointed by the Speaker of the House**

Representative Alan J. Greiman (Democrat, 15th District, Skokie)  
Representative Douglas N. Kane (Democrat, 50th District, Springfield)  
Representative Richard F. Kelly, Jr. (Democrat, 9th District, Hazel Crest)  
Representative Harry "Bus" Yourell (Democrat, 8th District, Oak Lawn)

**Appointed by the House Minority Leader**

Representative Glen L. Bower (Republican, 54th District, Effingham)  
Representative A.T. "Tom" McMaster (Republican, 47th District, Galesburg)  
Representative Jim Reilly (Republican 49th District, Jacksonville)  
Representative Robert C. Winchester (Republican, 59th District, Rosiclare)

Two of the members who served during 1980, Senators Martin and Regner, did not run for re-election to the General Assembly. They will be replaced on the Committee in 1981 by:

Senator Jack E. Bowers (Republican, 41st District, Downers Grove)  
Senator John W. Maitland, Jr. (Republican, 44th District, Bloomington)

Officers elected by the Committee in 1979 continued to serve throughout 1980. They provide basic direction for the Joint Committee staff and serve as the Executive Committee for making personnel and policy decisions. The officers are:

Chairman: Senator Prescott E. Bloom  
First Vice-Chairman: Senator Arthur L. Berman  
Second Vice-Chairman: Representative Jim Reilly  
Secretary: Representative Harry "Bus" Yourell

The staff of the Joint Committee is headed by an Executive Director selected by the members of the Joint Committee. The operational staff is divided into two sections:

(1) Rules Review Section, which conducts the on-going reviews of proposed, emergency and peremptory rules, and (2) Compliance and Monitoring Section, which is responsible for the five-year review program and for review of complaints about rules received from the public. Personnel and functional organization charts are presented in Tables Two and

TABLE TWO  
FUNCTIONAL ORGANIZATION CHART

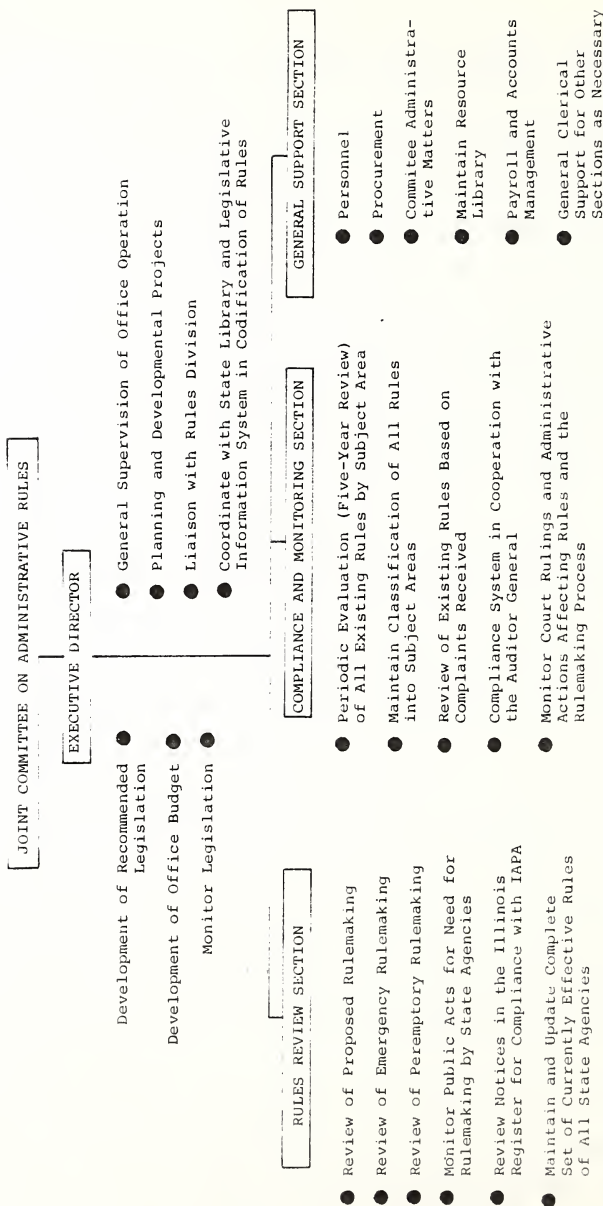
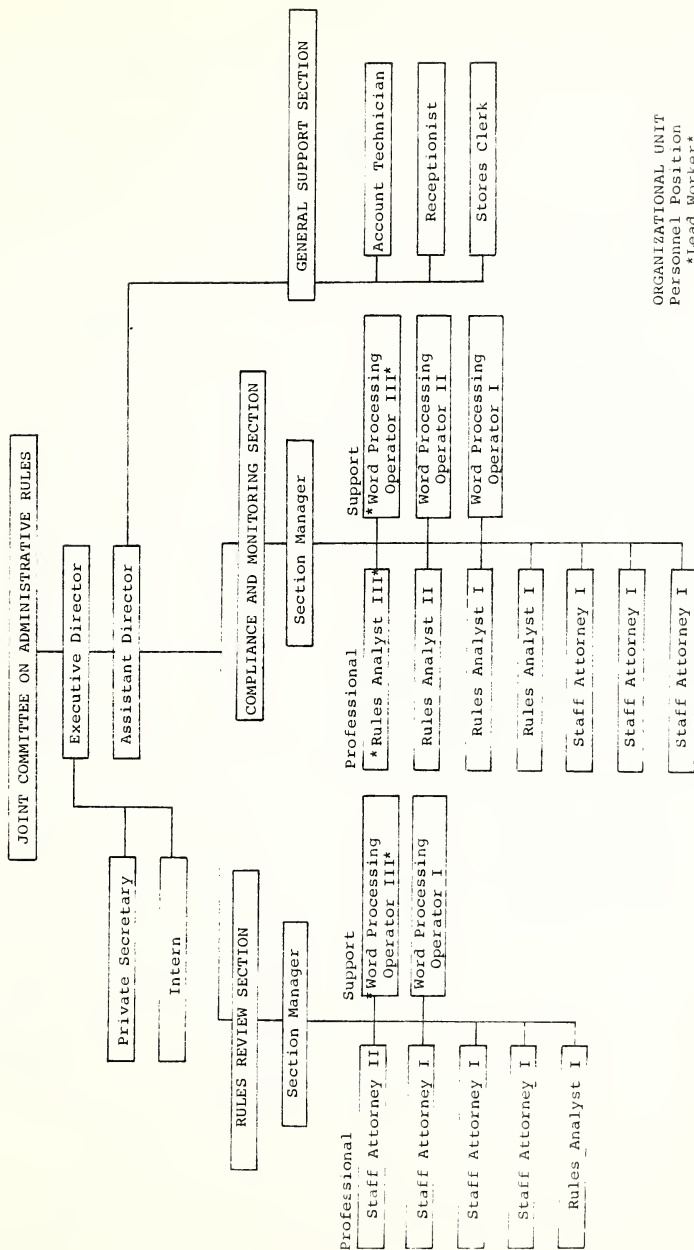


TABLE THREE  
PERSONNEL ORGANIZATION CHART



Three. The functional chart outlines in more detail the programmatic responsibilities of each section.

The management of the Joint Committee during 1980 included:

Executive Director: Bruce A. Johnson

Assistant Director: Kenneth E. Mitchell

Rules Review Manager: Michael L. Wallace

Compliance and Monitoring Manager: Thomas R. Wetzler

Several organizational changes, particularly the reorganization of the general support section, should aid in improving the staff's efficiency in providing information in a timely manner to the Committee members. These changes were developed as a result of an intensive effort to improve the personnel policies of the Committee during 1980. This effort included a study by the Department of Personnel of the office's position classifications, descriptions and salary ranges and a complete revision of the Committee's internal personnel rules.

### Report Overview

This annual report presents the results of the Joint Committee's review of rules and its other activities during 1980. The detail included in the report is intended to provide the members of the General Assembly and other interested individuals a comprehensive view of the Committee's activities and recommendations. The basic organization of the report follows the organization of the Committee's two previous annual reports to facilitate comparisons.

The first two sections of the report, following this introduction, are general in nature. They present respectively (1) a statistical overview of rulemaking by state agencies and the results of the Joint Committee's reviews and objections (pages 20 - 35) and (2) a complete list by agency of the specific objections to proposed, emergency, preemptory, and existing rules issued by the Committee during 1980 (pages 36 - 73).

The next several sections discuss the results of each of the review programs conducted by the Committee. The two major types of review under the Rules Review Section are presented first; the review of proposed rulemaking is discussed on pages 74 -

77, while the review of emergency and peremptory rulemaking is discussed on pages 78 - 80. The five-year review program, which is under the Compliance and Monitoring Section, is discussed next on pages 81 - 97. Complaint reviews (pages 98 - 103) and the review of new public acts (pages 104 - 108) are the last two programs to be presented.

Three special topics are discussed in the next sections of the report. These topics are of particular interest to the Joint Committee and are intended to provide valuable background information for individuals who are interested in the general rulemaking activities of state government. The first of these sections discusses procedural legislation which impacts on the rulemaking process, particularly amendments to the Administrative Procedure Act (pages 109 - 115). The next section discusses the efforts being made in Illinois to codify, computerize and centrally publish all the rules of all state agencies (pages 116 - 123). Although not directly involved in the codification process, the Joint Committee has been instrumental in stimulating action in this area in Illinois. The last of these special topics concerns court decisions and Attorney General opinions construing the Administrative Procedure Act (pages 124 - 125).

The final section of the report presents the specific bills developed by the Joint Committee for consideration by the General Assembly in 1981. The inclusion of these specific bills is mandated by Section 7.10 of the Administrative Procedure Act. Included are recommended amendments to the Administrative Procedure Act (pages 140-157), as well as bills to address specific substantive issues uncovered by the Committee in its reviews of rules (pages 158-244).

The appendices included in the report contain background information and documents which will be of interest to individuals following the activities of the Joint Committee.

## STATISTICAL OVERVIEW

This section presents a statistical summary of the rulemaking actions of Illinois agencies and objections issued by the Joint Committee during 1980. A number of the statistical tables compare 1980 data to the data collected in 1978 and 1979 to help reveal possible statistical trends in the rulemaking processes of the various state agencies.

In reviewing the data contained in this section, it should be noted that the various statistics represent extremely diverse and complex information relative to the rulemaking process. During 1980, nearly 19,000 pages of information, all of which related to rulemaking in one form or another, were published in the Illinois Register. Some sets of proposed rules contained hundreds of pages and were extremely complex and important to those individuals affected by them. Statistical tables alone cannot adequately convey this diversity or complexity, but should provide a general overview of rulemaking and Joint Committee action during 1980.

Table Four presents the number of proposed, emergency and peremptory rulemakings by agency. Four agencies — the Departments of Children and Family Services, Conservation, Public Aid and Public Health — accounted for 41.7% of all proposed rulemaking in 1980. The same agencies also accounted for 30.9% of all emergency rules for 1980. The State Board of Education and the Department of Public Aid together promulgated twelve peremptory rules, or 70.5% of the total number of peremptory rules for 1980.

Table Five compares the number of emergency and peremptory rulemakings by agency in 1979 and 1980. While the table shows a slight overall reduction in the number of emergency rules, some agencies (notably the Departments of Revenue and Insurance) show a fairly substantial increase in the number of emergency rules promulgated. Since emergency rules are not subject to public comment, overall reduction in emergency rulemaking is one of the goals of the Joint Committee. These figures may represent a promising trend; agencies may be more carefully limiting the use of the emergency rulemaking process to those situations which actually constitute emergencies.

The number of general rulemakings during 1978, 1979 and 1980 is compared by agency in Table Six. While the number of rulemakings decreased from 1978 to 1979, there

was a substantial increase during 1980. This increase may reflect a growing awareness by agencies of the need to embody their policies in formal rules.

No real correlation seems to exist between the agencies proposing the bulk of the rules and the agencies whose rules were objected to most often by the Committee. The summary of objections by agency is presented in Table Seven. Refusals to withdraw or modify rulemakings objected to by the Joint Committee account for 47.2% of the agency responses. The statements of objection include objections to proposed, emergency, and peremptory rulemakings and existing rules. As the table shows, although the number of proposed rulemakings increased in 1980, the number of statements of objection issued decreased. It is likely that the efforts of the Joint Committee in improving the rulemaking process contributed to this decrease in objections.

The objections issued during 1980 are broken down in Table Eight by the type of rule objected to: general, emergency, peremptory or existing. The number of objections to existing rules of the Department of Registration and Education is due to the structural organization of the five-year review program. Many of the rules of the Department of Registration and Education had been classified in the subject area of regulation of occupations, which was the major area reviewed by the Committee during 1980.

Table Nine presents an updated version of the statistical summary of statements of objection issued and the agency responses during 1979. At the time the 1979 Annual Report was prepared, a number of agency responses were still pending.

Presented in Table Ten are the effects of the Joint Committee review of new rulemakings during 1980. The low percentage of objections issued may be at least partially due to the impact of staff-level discussions with agency personnel on the rulemakings. Many modifications and improvements in rulemakings were suggested in these discussions and accepted by the agencies prior to the Committee meetings, thereby allowing the agencies to move more smoothly through the rulemaking process.

Comparable updated figures from 1979 are presented in Table Eleven. The table shows a reduction during 1980 from 1979 in both the number of modifications and the number of refusals, although the percentage of refusals has risen slightly. This may be due in part to the reduction in the overall number of objections issued in 1980. The objections during 1980 may have involved issues which were more difficult for agencies to respond to positively.

Tables Twelve and Thirteen present the number of the Joint Committee's objections and agency responses by quarter for 1979 and 1980. Table Thirteen provides the updated figures for 1979, and shows a decrease in objections issued during the last two quarters. Table Twelve presents comparable figures for 1980 and shows a similar pattern, although the objections to existing rules which resulted from the five-year review program increased substantially the number of objections issued during the past quarter of the year.

This overview should provide some general indications of the extent of the Joint Committee's efforts to improve and monitor the rulemaking process, and the impact of the Committee on agency rulemaking in Illinois. The specific substantive issues which are indicated in the actual statements of objection in the next section of this report should balance the statistical presentation in this section.

TABLE FOUR  
STATISTICAL SUMMARY OF RULEMAKINGS BY AGENCY FOR 1980

<u>Code Departments</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Administrative Services	7		
Aging	6	1	1
Agriculture	14	2	
Children & Family Services	60	2	
Conservation	75	13	
Corrections	38	4	
Financial Institutions	8	2	
Insurance	17	4	
Labor	3	1	
Law Enforcement	1		
Local Government Affairs	3		
Mental Health & Developmental Disabilities	4		
Mines and Minerals	5	1	
Nuclear Safety	1		
Personnel	9	4	
Public Aid	47	4	5
Public Health	55	11	
Registration and Education	22	2	
Rehabilitation Services	3		
Revenue	24	9	
Transportation	13	2	
Veterans' Affairs	2		
<u>Constitutional Offices</u>			
Attorney General	2		
Auditor General	2		
Comptroller	4	1	
Secretary of State	12		
Treasurer			
<u>Legislative Agencies</u>			
Joint Committee on Administrative Rules	1		
Legislative Information System	2	1	
<u>Miscellaneous Agencies</u>			
Banks & Trust Companies, Commissioner of	5	3	
Capital Development Board	3	2	
Commerce Commission	19	5	
Dangerous Drugs Commission	5	1	

<u>Miscellaneous Agencies</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Education, State Board of	9	3	7
Educational Facilities Authority	1		
Elections, State Board of	8	4	
Environmental Protection Agency	10	3	
Fire Marshal	1	1	
Governor's Purchased Care Review Board	2	1	
Guardianship & Advocacy Commission	2		
Health Finance Authority	5		
Higher Education, Board of	2		
Higher Education Travel Control Board	1		
Housing Development Authority	1		
Human Rights, Department of	1	1	
Industrial Commission	3	1	
Investments, State Board of	1		
Law Enforcement Merit Board	1	1	
Natural Resources, Institute of	1		
Pollution Control Board	18	1	4
Racing Board	19	2	
Savings & Loan Commissioner	1	1	
Scholarship Commission, Illinois State	4		
State Employees' Retirement System	5	3	
Total:	568	97	17

TABLE FIVE

COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING  
BY AGENCY FOR 1979 AND 1980

<u>Code Departments</u>	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1979</u>	<u>1980</u>	<u>1979</u>	<u>1980</u>
Aging	1	1		1
Agriculture	3	2		
Children & Family Services		2		
Conservation	16	13		
Corrections	8	4		
Financial Institutions	1	2		
Human Rights		1		
Insurance		4		
Labor		1		
Mental Health & Developmental Disabilities	1			
Mines & Minerals		1		
Personnel	5	4		
Public Aid	14	4	6	5
Public Health	12	11		
Registration & Education	3	2		
Revenue	1	9		
Transportation	2	2		
<u>Constitutional Offices</u>				
Comptroller	2	1		
Secretary of State	2			
<u>Legislative Agencies</u>				
Legislative Information System		1		
<u>Miscellaneous Agencies</u>				
Banks & Trust Companies, Commission of	1	3		
Capital Development Board		2		
Commerce Commission	1	5		
Dangerous Drugs Commission		1		
Education, State Board of		3	1	7
Elections, State Board of	1	4		
Environmental Protection Agency	3	3		
Fire Marshal	1	1		
Governor's Office of Manpower & Human Development	1		1	
Governor's Purchased Care Review Board	4	1		
Health Finance Authority	1			

<u>Miscellaneous Agencies</u>	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1979</u>	<u>1980</u>	<u>1979</u>	<u>1980</u>
Industrial Commission		1		
Law Enforcement Merit Board		1		
Natural Resources, Institute of	2			
Pollution Control Board	1	1	1	4
Racing Board	7	2		
Savings & Loan Commissioner	1	1		
State Employees' Retirement System		3		
Criminal Justice Information Board	2			
Higher Education, Board of	1			
Investment, State Board of	1			
Medical Center Commission	1			
Guardianship & Advocacy Commission	1			
Fair Employment Practices Commission	1			
	—	—	—	—
Total:	102	97	9	17

TABLE SIX

## COMPARISON OF GENERAL RULEMAKINGS BY AGENCY FOR 1978, 1979 AND 1980

<u>Code Departments</u>	<u>General Rulemakings</u>		
	<u>1978</u>	<u>1979</u>	<u>1980</u>
Administrative Services	1		7
Aging	5	1	6
Agriculture	14	17	14
Children & Family Services	2	2	60
Conservation	76	92	75
Corrections	82	23	38
Financial Institutions	1	10	8
Insurance	15	14	17
Labor	5	6	3
Law Enforcement	2		1
Local Government Affairs	1		3
Mental Health and Developmental Disabilities	8	13	4
Mines and Minerals	4		5
Nuclear Safety			1
Personnel	10	9	9
Public Aid	46	56	47
Public Health	42	43	55
Registration & Education	11	11	22
Rehabilitation Services			3
Revenue	11	16	24
Transportation	13	13	13
Veterans' Affairs	1	2	2
<u>Constitutional Offices</u>			
Attorney General	3	1	2
Auditor General	7	5	2
Comptroller	1	2	4
Secretary of State	15	21	12
Treasurer	1	1	
<u>Legislative Agencies</u>			
Joint Committee on Administrative Rules	3	5	1
Legislative Information System	1		2
Legislative Travel Control Board	1	1	
<u>Miscellaneous Agencies</u>			
Banks & Trust Companies, Commissioner of	2	5	
Capital Development Board	2	1	3

General Rulemakings

<u>Miscellaneous Agencies</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Commerce Commission	17	11	19
Community College Board		1	
Criminal Justice Information Council	1	2	
Dangerous Drugs Commission	14	2	5
Education, State Board of	3	4	9
Educational Facilities Authority			1
Elections, State Board of	6	1	8
Environmental Protection Agency	7	12	10
Fair Employment Practices Commission	2	3	
Fire Marshal	1	2	1
Manpower & Human Development	2		
Governor's Purchased Care Review Board	1	6	2
Guardianship & Advocacy Commission			2
Health Facilities Authority	5	2	
Health Facilities Planning Board		1	
Health Finance Authority		1	5
Higher Education, Board of		3	2
Higher Education Travel Control Board		1	1
Housing Development Authority			1
Industrial Commission	4	1	3
Investments, State Board of		3	1
Law Enforcement Merit Board	2	2	1
Local Records Commission		1	
Lottery Control Board		2	
Medical Center Commission		1	
Natural Resources, Institute of		1	1
Pollution Control Board	18	11	18
Racing Board	10	14	19
Savings & Loan Commissioner	3	4	1
Scholarship Commission, Illinois State	1	3	4
State Employees' Retirement System	2	3	5
State Fair Agency		4	
Statewide Health Coordinating Council	4	1	
	<hr/>	<hr/>	<hr/>
Total:	507	475	568

TABLE SEVEN

STATISTICAL SUMMARY BY AGENCY OF STATEMENTS OF OBJECTION  
ISSUED DURING 1980 AND AGENCY RESPONSES

<u>Code Departments</u>	Statements of <u>Objection</u>	<u>Responses</u>		
		<u>Withdrawn</u>	<u>Modified</u>	<u>Refused</u>
Aging	1			1
Children & Family Services	3	2		1
Conservation	2	2		
Corrections	2			2
Financial Institutions	2		1	1
Insurance	2			2
Mental Health & Developmental Disabilities	1		1	
Public Aid	2		1	1
Public Health	3		1	2
Registration & Education	17	1	14	2
Revenue	4		1	3
<u>Constitutional Offices</u>				
Attorney General	1			1
<u>Other Agencies</u>				
Banks & Trust Companies, Commissioner of	4			4
Commerce Commission	2			2
Elections, State Board of	2			2
Environmental Protection Agency	2		1	1
Higher Education, Board of	1		1	
Pollution Control Board	2		2	
Racing Board	1		1	
Scholarship Commission, Illinois State	<u>1</u>	—	—	<u>1</u>
Total:	55	5	24	26

TABLE EIGHT

STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION  
ISSUED DURING 1980 BY AGENCY AND TYPE OF OBJECTION

<u>Code Departments</u>	<u>Total Statements of Objection</u>	<u>General Rulemakings Objected to</u>	<u>Emergency Rulemakings Objected to</u>	<u>Peremptory Rulemakings Objected to</u>	<u>Existing Rules Objected to</u>
Aging	1			1	
Children & Family Services	3	2	1		
Conservation	2		2		
Corrections	2	2			
Financial Institutions	2	1	1		
Insurance	2		2		
Mental Health & Developmental Disabilities	1	1			
Public Aid	2	2			
Public Health	3	2			1
Registration and Education	17	3			14
Revenue	4	3	1		
<u>Constitutional Offices</u>					
Attorney General	1	1			
<u>Other Agencies</u>					
Banks & Trust Companies Commissioner of	4	1	3		
Commerce Commission	2	1	1		
Elections, State Board of	2	1	1		
Environmental Protection Agency	2	1	1		
Higher Education, Board of	1	1			
Pollution Control Board	2	1		1	
Racing Board	1	1			
Scholarship Commission, Illinois State	1	1			
	—	—	—	—	—
Total	55	25	13	2	15

TABLE NINE

UPDATED STATISTICAL SUMMARY BY AGENCY OF STATEMENTS OF OBJECTION  
ISSUED DURING 1979 AND AGENCY RESPONSES

<u>Code Departments</u>	<u>Statements of Objection</u>	<u>Withdrawn</u>	<u>Responses</u>	
			<u>Modified</u>	<u>Refused</u>
Agriculture	2		1	1
Conservation	7			7
Financial Institutions	4		2	2
Labor	2		2	
Mental Health & Developmental Disabilities	2		2	
Public Aid	11		6	5
Public Health	10		4	6
Registration and Education	4		2	2
Revenue	4	1	1	2
<u>Other Agencies</u>				
Commerce Commission	4		1	3
Community College Board	1		1	
Criminal Justice Information Council	1			1
Education, State Board of	2		2	
Environmental Protection Agency	2		2	
State Fire Marshal	1		1	
Health Facilities Authority	1		1	
Investment, State Board of	1		1	
Lottery Control Board	2	1		1
Pollution Control Board	1			1
Racing Board	1			1
State Scholarship Commission	1		1	
University Civil Service Merit Board	1			1
	—	—	—	—
Total:	65	2	30	33

Updates Table Four of the 1979 Annual Report (page 24).  
At that time, eight responses were pending.

TABLE TEN

## STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKING IN 1980

Total Number of General, Emergency and Peremptory Rulemakings <u>Reviewed</u>	Number of Statements of Objection Issued by Joint <u>Committee</u>	Number and Nature of Agency Responses to Statements <u>of Objection</u>
682	55	55
	(8.0% of Total Number of Rulemakings Reviewed)*	Rulemaking Withdrawn After Objection: 5 (9.0%)
		Rulemaking Modified to Meet Objection: 24 (43.6%)
		Refusal to Withdraw or Modify Rulemaking: 26 (47.2%)

\*Percentages are based on actual number of rules which have been considered at a Joint Committee meeting during 1980. Rulemakings by the same agency which raise the same problem at the same time are considered as a unit.

# TABLE ELEVEN

## UPDATED STATISTICAL SUMMARY OF JOINT COMMITTEE REVIEW AND IMPACT ON RULEMAKING IN 1979

<u>Total Number of Rulemakings Reviewed</u>	<u>Number of Statements of Objection Issued by Joint Committee</u>	<u>Number and Nature of Agency Responses to Statements of Objection</u>
528	65	65
	(12.3% of Total Number of Rulemakings Reviewed)	<p>Rulemaking Withdrawn After Objection: 2 (3%)</p> <p>Rulemaking Modified to Meet Objection: 30 (46.1%)</p> <p>Refusal to Withdraw or Modify Rulemaking: 33 (50.7%)</p>

Updates Table Seven of the 1979  
Annual Report (page 29). At that  
time, eight responses were  
pending.

TABLE TWELVE  
 STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION  
 ISSUED BY QUARTER DURING 1980

	Number of Statements of <u>Objection</u>	<u>Responses</u>		
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>
January - March	11		5	6
April - June	15	2	4	10
July - September	9		3	6
October - December	20	3	12	4
	—	—	—	—
Total:	55	5	24	26

TABLE THIRTEEN

UPDATED STATISTICAL SUMMARY OF STATEMENTS OF OBJECTION  
ISSUED BY QUARTER DURING 1979

	Number of Statements of <u>Objection</u>	<u>Responses</u>		
		<u>Withdraw</u>	<u>Modify</u>	<u>Refusal</u>
January - March	18	2	10	6
April - June	23		12	11
July - September	12		2	10
October - December	12		6	6
	—	—	—	—
Total:	65	2	30	33

Updates Table Ten of the 1979 Annual Report (page 32).  
At that time, eight responses were pending.

## SPECIFIC STATEMENTS OF OBJECTION ISSUED

Each of the statements of objection issued by the Joint Committee during 1980 is listed in this section. It includes objections to existing rules issued as a result of the five-year review program as well as the objections issued to proposed, emergency and peremptory rules. The objections are presented by agency, following the same order as Table Seven (page 29).

These specific objections indicate well the detail in which the Joint Committee reviews the rules of state agencies. Many of the objections raise basic issues of statutory authority or legislative intent, while others focus on specific conflicts between the rules and the authorizing statute or the lack of adequate standards in the rules to guide the agency's discretion. Most of the specific objections to emergency and peremptory rules indicate a failure by the agency to follow the procedural requirements of the Administrative Procedure Act for such types of rulemaking.

### **CODE DEPARTMENTS**

#### **Department on Aging**

##### Administration of Department, Area Agencies on Aging, and Programs [Peremptory]

Publication in Illinois Register: May 9, 1980

Effective Date: April 30, 1980

Joint Committee Objection: June 17, 1980

Specific Objection:

Peremptory Rule on Administration of Department, Area Agencies on Aging, and Programs. This rule adopts by reference Federal Regulation 45 CFR 1321 which was published as a final rule on March 31, 1980. The rule also declares that any of its rules (with two stated exceptions) which are inconsistent with the Federal requirements are superseded.

The Joint Committee objects to this peremptory rulemaking because it was promulgated in violation of Section 5.03 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.03. The Department was not required to adopt Federal Regulation 45 CFR 1321 in such a manner that it was precluded from complying with general rulemaking requirements imposed by Section 5.01 of the IAPA or precluded from exercising its discretion regarding the content of the rule.

Date Agency Response Received: July 29, 1980

Nature of Agency Response: Refused to Amend or Repeal

**Department of Children and Family Services**

Regulation 9.04, "Administration of Children's Trust Funds" [Emergency]

Publication in Illinois Register: March 14, 1980

Effective Date: February 27, 1980

Joint Committee Objection: April 22, 1980

Specific Objection:

The Department's use of the IAPA's emergency rulemaking provisions to implement a "compliance audit" issued nearly two years ago.

The Joint Committee objects to this emergency rulemaking because it is filed in violation of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat., ch 127, par. 1005.02.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

Regulation 9.01, "Reimbursement to Counties for Support of Minors who are Dependent, Neglected, Delinquent or Otherwise in Need of Supervision"

Initial Publication in Illinois Register: March 14, 1980

Date Second Notice Received: April 30, 1980

Joint Committee Objection: June 17, 1980

Specific Objection:

Proposed Rule 9.01 which states, in part:

The monthly reimbursement to the county shall be equal to the amount so paid out by the county less parental/guardian contributions but not more than an amount equal to the current daily rate paid by the Department for regular foster care services for any minor. (Emphasis added.)

The Joint Committee objects to this proposed rule because the method for determining the current daily rate for regular foster care services constitutes "rules" as that term is defined in the Illinois Administrative Procedure Act, and the Department's failure to include this method in proposed regulation 9.01 is in violation of Section 4(c) of the IAPA which states that "[n]o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: No Response Received

Nature of Agency Response: Withdrawn by Operation of Law

Repeal and New Regulation 9.04, "Administration of Children's Trust Funds"

Initial Publication in Illinois Register: March 14, 1980

Date Second Notice Received: April 30, 1980

Joint Committee Objection: June 17, 1980

Specific Objection:

Proposed Rule 9.04(1)(c) which states:

Care and maintenance payments shall include items as room, board, food, clothing and personal allowance.

Proposed Rule 9.04(3) which states in part:

Any balance remaining [in the child's trust fund] shall accumulate and may be expended for the benefit of the child for medical costs, clothing or miscellaneous items per limitations of the Department's payment policy.

The Joint Committee objects to these proposed rules because the methodology for determining the monthly disbursement amount and the Department's payment policy constitute "rules" as that term is defined in the Illinois Administrative Procedure Act, and the Department's failure to include such items in these proposed rules is in violation of Section 4(c) of the Illinois Administrative Procedure Act which states that "[n]o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: No Response Received

Nature of Agency Response: Withdrawn by Operation of Law

**Department of Conservation**

Article 103 — Hunting and Trapping at Sand Ridge State Forest [Emergency Amendment]

Publication in Illinois Register: November 28, 1980

Effective Date: November 13, 1980

Joint Committee Objection: December 18, 1980

Specific Objection:

Emergency amendment to Article 103 establishes a new program for hunting pheasant, which became available recently from the Department's game farms.

The Joint Committee objects to this emergency rulemaking because this rulemaking does not appear to be in compliance with the definition of an "emergency" in Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02). This program included pheasants last spring and the Department failed to state an emergency situation which requires the use of the emergency rulemaking process at this time. It is apparent that the Department has had sufficient time prior to the use of the emergency rulemaking process to follow the general rulemaking process in Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01).

Date Agency Response Received: December 23, 1980

Nature of Agency Response: Withdrawn

Article 107 — Hunting and Trapping at Washington County Conservation Area  
[Emergency Amendment]

Publication in Illinois Register: November 28, 1980

Effective Date: November 13, 1980

Joint Committee Objection: December 18, 1980

Specific Objection:

Emergency amendment to Article 107 establishes a new program for hunting pheasant, which became available recently from the Department's game farms.

The Joint Committee objects to this emergency rulemaking because this rulemaking does not appear to be in compliance with the definition of an "emergency" in Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02). This program included pheasants last spring and the Department failed to state an emergency situation which requires the use of the emergency rulemaking process at this time. It is apparent that the Department has had sufficient time prior to the use of the emergency rulemaking process to follow the general rulemaking process in Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01).

Date Agency Response Received: December 23, 1980

Nature of Agency Response: Withdrawn

**Department of Corrections**

Adult Division A.R. 103, "Resident and Employee Commissaries"

Initial Publication in Illinois Register: February 29, 1980

Date Second Notice Received: April 30, 1980

Joint Committee Objection: June 17, 1980

Specific Objection:

Proposed Adult Division A.R. 103 which provides for the purchasing and sales of goods to be sold by commissaries.

The Joint Committee objects to this proposed rule because the policy of the Department regarding purchases of goods to be sold by the commissaries and purchases made with profits from the operation of the commissaries is in violation of the provisions of the Illinois Purchasing Act, Ill. Rev. Stat. 1979, ch. 127, par. 132.1 et seq.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Modify or Withdraw

Adult Division A.R. 817-A, "Day Release"

Initial Publication in Illinois Register: February 22, 1980

Date Second Notice Received: August 25, 1980

Joint Committee Objection: September 26, 1980

Specific Objections:

Proposed Adult Division A.R. 817-A, "Day Release". This proposed rulemaking amends the Department's "Day Release" rule to allow inmates to participate in public work projects, attend an educational institution and become involved in other treatment alternatives.

The Joint Committee objects to A.R. 817-A because it lacks adequate standards to govern the Department's exercise of discretion with regard to the use of day release, the approval of individuals who will escort a resident and the imposition of sanctions for violating a rule established by the Department. Section 4.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1004.02, requires that any rule which implements a discretionary power of an agency "shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: No Response Received

Nature of Agency Response: Withdrawn by Operation of Law

**Department of Financial Institutions**

Section Twenty of the Rules and Regulations Governing the Enforcement of the Consumer Installment Loan Act [Emergency]

Publication in Illinois Register: February 1, 1980

Effective Date: January 16, 1980

Joint Committee Objection: February 20, 1980

Specific Objection:

Section Twenty of the Rules and Regulations Governing the Enforcement of the Consumer Installment Loan Act. Due to an oversight, by the Department, this rule was misplaced and not found until another rule was being prepared to be filed. Since it was necessary to use emergency rulemaking to implement this other rule, the Department also promulgated the Section Twenty rule as an emergency rule.

The Joint Committee objects to Section Twenty of the Department's Rules and Regulations Governing the Enforcement of the Consumer Installment Loan Act because the Department did not demonstrate the existence of a situation reasonably constituting a threat to the public interest, safety or welfare, thereby violating Section 5.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: May 16, 1980

Nature of Agency Response: Refused to Amend or Repeal

Credit Union Division Rules

Initial Publication in Illinois Register: November 26, 1979

Date Second Notice Received: February 15, 1980

Joint Committee Objection: March 26, 1980

Specific Objections:

Proposed Rule 13.09.01.B.4 This section of Rule 13.09.01 describes the procedures that a credit union must follow when it sells, in whole or in part, any obligation of its members or any purchased loan. Subsection 4 requires that the credit union obtain the Department's prior approval if such sale or sales within a 12 month period involve 20% or more of the credit union's assets "or are otherwise part of a plan to systematically reduce the credit union's assets."

The Joint Committee objects to this Rule because it fails to include the standards or criteria used by the Department to determine whether to approve the above-mentioned types of sales. The failure to include such standards or criteria is a violation of Section 4.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat., 1979, ch. 127, par. 1004.02.

In addition, the Joint Committee objects to this Rule because it violates Section 13(9) of the Credit Union Act, Ill. Rev. Stat. 1979, ch. 32 par. 1313(9). That Section requires a credit union to obtain the Director of the Department's prior approval when it sells "all or substantially all of its assets." Since a 20% sale cannot be considered the equivalent of a

sale of all or substantially all of a credit union's assets, such requirement in the Department's Rule is in violation of Section 13(9) of the Act.

Date Agency Response Received: May 7, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: May 16, 1980

Effective Date: May 7, 1980

#### **Department of Insurance**

##### Rule P22.01, Pension Examination and Compliance Procedure [Emergency]

Publication in Illinois Register: February 22, 1980

Effective Date: February 6, 1980

Joint Committee Objection: March 26, 1980

Specific Objection:

The Department's use of the emergency rulemaking process to promulgate the amendments to Rule P22.01 which establish a civil penalty.

The Joint Committee objects to the Department's use of the emergency rulemaking process because it is in violation of Section 5.02 of the Illinois Administrative Procedure Act in that there is no threat to public interest, safety or welfare.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

##### Rule 31.17 — Licensing Requirements and Procedures for Agents and Brokers [Emergency]

Publication in Illinois Register: June 13, 1980

Effective Date: June 2, 1980

Joint Committee Objection: August 22, 1980

Specific Objection:

Emergency Rule 31.17, Licensing Requirements and Procedures for Agents and Brokers implements P.A. 80-1025, which became effective October 1, 1977.

The Joint Committee objects to this emergency rulemaking because it does not meet the requirements of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.02.

Section 5.02 provides that emergency rulemaking procedures may only be used "[w]here an agency finds that an emergency exists which requires the adoption of rules upon fewer days' notice than is required by Section 5.01...." In this case, the Department's delay of almost three years in implementing by rule P.A. 80-1025 does not constitute such an emergency.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

### **Department of Mental Health and Developmental Disabilities**

Rules 1.02, 1.03, 1.05, 1.09, 2.01, 2.03, 3.03, 4.01, 4.03, 12.08, 12.09

Initial Publication in Illinois Register: December 14, 1979

Date Second Notice Received: February 11, 1980

Joint Committee Objection: March 26, 1980

Specific Objection:

Proposed Rule 3.03(B)(3) which states, in part:

The amount of the [construction] grant shall be determined by the current priority ranking as contained in the state plans for construction under Public Law 88-164, P.L. 94-63, or similar subsequent Acts.

The Joint Committee objects to this proposed rule because the priority ranking and method of determining that ranking constitute "rules" as that term is defined in Section 3.09 of the Illinois Administrative Procedure Act, Ill. Rev. Stat., ch. 127, par. 1003.09, and the failure of the Department to include such priority ranking and method for determining that ranking in proposed Rule 3.03 is in violation of Section 4(c) of the IAPA which states that "[n]o agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

It should be noted that the Joint Committee originally objected to proposed Rule 3.03(B)(3) at its June 1978 meeting. However, the Department has not taken definite action to remedy the objection.

Date Agency Response Received: April 25, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: April 25, 1980

Effective Date: April 15, 1980

## Department of Public Aid

### Rule 4.10, Clinic Services

Initial Publication in Illinois Register: March 28, 1980

Date Second Notice Received: May 21, 1980

Joint Committee Objection: June 17, 1980

Specific Objection:

Proposed Rule 4.10, Clinic Services. This proposed rule specifies that a hospital clinic must be adjacent to or on the premises of the hospital and be licensed under the Hospital Licensing Act. In addition, the proposed rule requires that a Community Health Center be presently participating in the Medical Assistance Program.

The Joint Committee objects to this rule because it is arbitrary, unreasonable and capricious. The proposed rule creates an artificial distinction between hospital owned and operated clinics based upon their geographical location. In addition, the rule prevents a new or existing clinic from being classified or reimbursed at the same rate as a Community Health Center without determining whether or not the clinic provides or will provide the level of care that Community Health Centers are required to provide.

Date Agency Response Received: July 18, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: July 25, 1980

Effective Date: July 15, 1980

### Rule 4.03, Physician's Services; Rule 4.09, Pharmacy Services; Rule 4.05, Dental Services; Rule 4.06, Podiatry Services

Initial Publication in Illinois Register: May 30, 1980

Date Second Notice Received: August 14, 1980

Joint Committee Objection: September 26, 1980

Specific Objections:

1. Proposed Rules 4.03, 4.05, 4.06 and 4.09. These proposed rules were amended to provide that the Department will not provide reimbursement for drugs which have been prescribed to public aid recipients if those drugs are classified by the Food and Drug

Administration as ineffective or unsafe in a final order. These rules also provide that reimbursement will not be made for drugs that have been given an interim classification of ineffective or unsafe by the Food and Drug Administration unless the Department gives prior approval.

The Joint Committee objects to these proposed rules because the Department failed to consult with and give substantial weight to recommendations offered by the Legislative Advisory Committee. Section 5-5 of the Public Aid Code, Ill. Rev. Stat. 1979, ch. 23, par. 5-5, requires that the Department engage in such a consultation process whenever it formulates rules governing the dispensing of health care services under the Medical Assistance Program.

2. Proposed Rule 4.09. The prior approval process which the rule imposes upon physicians for reimbursement of drugs that have been given an interim classification of ineffective or unsafe by the Food and Drug Administration denies Medical recipients equal protection under the law because it makes drugs that are otherwise available to the general public less available to such recipients. Such a restriction is not rationally related to any legitimate State purpose including fiscal frugality.
3. Proposed Rule 4.09. The Joint Committee also objects to proposed Rule 4.09 because its prior approval process is incapable of handling requests expeditiously and is therefore improper.

Date Agency Response Received: December 29, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: February 13, 1981

Effective Date: January 31, 1980

#### **Department of Public Health**

Minimum Standards, Rules and Regulations for Classification and Licensure of Community Living Facilities, Intermediate Care Facilities for the Developmentally Disabled, Sheltered Care Facilities, and Skilled Nursing Facilities and Intermediate Care Facilities

Initial Publication in Illinois Register: March 28, 1980

Date Second Notice Received: May 28, 1980

Joint Committee Objection: June 17, 1980

Specific Objections:

1. Proposed Rule 03.03.01.00 which states:

A written contract shall be executed between a person or his guardian or if the resident is a minor, his parent, and a

facility or its agent before a person is admitted to a facility, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds; if a person is a resident of a facility on the effective date of the Act and no legally enforceable contract exists, then a contract as described in this Section shall be executed within sixty (60) days after the effective date of this Act.

The Joint Committee objects to proposed Rule 03.03.01.00 because the proposed rule does not reflect the actual policy of the Department in the area of contracts.

2. Proposed Rule 16.01.04.00 which states:

The facility shall provide adequate storage space for the personal property of the resident.

Proposed Rule 43.02.03.00 which states, in part:

[t]he facility shall have a written agreement...to provide adequate and sufficient consultation to the activity director.

Proposed Rule 90.01.09.00 which states:

Dining room furnishing shall be adequate in number, well constructed and of satisfactory design for the residents.

The Joint Committee objects to these proposed rules because the terms "adequate," "sufficient" and "satisfactory" are meaningless as a useful guide to determine a facility's compliance with these proposed rules.

Date Agency Response Received: July 15, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: July 25, 1980

Effective Date: July 28, 1980

Rules and Regulations Promulgated Under the Illinois Plumbing Code [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule 14.4.4(b), titled "right of entry," states that "the authorized representative of the administrative authority shall, after proper identification, have the right to enter any premises for the purpose of enforcing any ordinance, resolution, rule or regulation, or code adopted to regulate plumbing and plumbers." Statutory authority for the rule

arises from the Illinois Plumbing License Law, which provides that "the Department is authorized and directed to make inspections necessary to determine compliance with this Act and the plumbing code promulgated hereunder." (Ill. Rev. Stat. 1979, ch. 111, par. 1139). That statutory provision may be applied constitutionally or unconstitutionally, depending on what rules and procedures are adopted to implement it.

The United States Supreme Court has ruled that provisions such as the one found in the Plumbing License Law violate the Fourth Amendment to the United States Constitution insofar as they purport to authorize inspections without a warrant or its equivalent. The court did indicate, however, that such authority could be constitutionally exercised if done pursuant to regulations and judicial process satisfying the Fourth Amendment.

The Supreme Court also said that warrantless search provisions are not necessarily constitutionally infirm, but that the reasonableness of a warrantless search will depend upon the specific enforcement needs and privacy guarantees of each statute.

Rule 14.4.4(b) contains no privacy guarantees, nor provisions for obtaining a warrant or other process prior to conducting an unconsented search. The enforcement needs do not appear to justify warrantless searches.

The Joint Committee objects to Rule 14.4.4(b) because it fails to meet constitutional requirements as enunciated by the United States Supreme Court.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

#### Program Standards for Local Health Departments

Initial Publication in Illinois Register: June 16, 1980

Date Second Notice Received: August 28, 1980

Joint Committee Objection: November 19, 1980

Specific Objection:

Proposed rule 5.2.0 provides for an optional Mental Health and Developmental Disabilities Program. However, under Section 14 of the County Public Health Department's Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c13.15.) this program is required and cannot be made optional.

The Joint Committee objects to this proposed rulemaking because it fails to comply with Section 14 of the County Public Health Department's Act.

Date Agency Response Received: January 12, 1981

Nature of Agency Response: Refused to Modify or Withdraw

**Department of Registration and Education**

Repeal and New Rules for the Administration of the Illinois Structural Engineering Act

Initial Publication in Illinois Register: December 28, 1979

Date Second Notice Received: March 26, 1980

Joint Committee Objection: April 22, 1980

Specific Objection:

Rule II (B)(3) which requires persons licensed as either professional engineers or structural engineers in another state to submit to an oral review prior to receiving a license as a structural engineer in Illinois.

The Joint Committee objects to proposed rule II (B)(3) because the Department lacks the statutory authority to require persons who are licensed as a structural engineer in another state to submit to an oral review as a condition of receiving a licensure by reciprocity. Section 11 of the Illinois Structural Engineering Act, Ill. Rev. Stat. 1979, ch. 111, par. 6522, provides that persons licensed as structural engineers in another state are eligible for an Illinois license without examination.

Date Agency Response Received: May 15, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: May 30, 1980

Effective Date: May 15, 1980

Rules for the Administration of the Illinois Nursing Act

Initial Publication in Illinois Register: July 11, 1980

Date Second Notice Received: September 10, 1980

Joint Committee Objection: October 17, 1980

Specific Objection:

Proposed Rules A.3.b and A.3.c would permit certain applicants to take one more license examination after they have failed six or more times. The Department has no statutory authority to permit applicants who have failed six or more prior examinations to take a seventh or subsequent examinations without repeating the entire course of study. Further, it was the feeling of the Committee that the relevant statute (Illinois Revised Statutes, ch. 111, sec. 3428.2) specifically prohibits the taking of the seventh or subsequent examination without repeating the entire course of study, and that the statutory language is so clear that

the Department does not retain discretionary power to permit certain applicants to be excepted from the limitation because of lack of notice or because a prior rule worded like the statute was not strictly enforced.

Section 7.06 of the Illinois Administrative Procedure Act gives the Joint Committee on Administrative Rules the power to "examine any proposed rule...[to determine] whether the proposed rule...is within the statutory authority upon which it is based..." The JCAR concludes that Proposed Rules A.3b and A.3.c are without the necessary statutory authority.

Date Agency Response Received: January 7, 1981

Nature of Agency Response: Refused to Modify or Withdraw

Rules I Through XV, Medical Disciplinary Board

Initial Publication in Illinois Register: July 18, 1980

Date Second Notice Received: September 9, 1980

Joint Committee Objection: October 17, 1980

Specific Objection:

Proposed Rules 6.01(2), (4) and (19) and 6.03(c) contain inadequate standards and criteria for determining whether disciplinary action should be taken against physicians or physician's assistants.

The Joint Committee objects to these proposed rules because they lack adequate standards to govern the Board's exercise of discretion in determining what constitutes "sufficiently rehabilitated to warrant public trust," "engaging in dishonorable, unethical or unprofessional conduct likely to deceive, defraud or harm the public," and "immoral conduct in practice as a physician, or repeated acts of gross misconduct," and is in violation of Section 4.02 of the Illinois Administrative Procedure Act, which requires standards for the exercise of discretion to be "stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected."

Date Agency Response Received: January 22, 1981

Nature of Agency Response: Refused to Modify or Withdraw

Rule I of the Rules and Regulations Promulgated for the Administration of the Illinois Medical Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule I states simply that medical colleges having rules and curricula "commensurate with and equivalent to the rules and curricula of the

College of Medicine at the University of Illinois," will be "considered" for accreditation by the Department.

The Department, by stating that medical colleges having rules and curricula commensurate with and equivalent to those of the University of Illinois "will be considered" for accreditation, indicates that there are more standards and criteria involved in an accreditation decision than mere equivalency with the rules and curricula of the College of Medicine at the University of Illinois. Section 4.02 of the Illinois Administrative Procedure Act requires that each rule implementing such a discretionary power or action must clearly and precisely set forth the standards by which such discretion is exercised. The Department has not done so in this instance.

The Joint Committee objects to Rule I on the basis that it lacks adequate standards and criteria for the exercise of discretionary power.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule IV of the Rules and Regulations Promulgated for the Administration of the Illinois Medical Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

One of the requirements which applicants for licensure under the Medical Practice Act must fulfill, as set forth in Rule IV, part (a) is that such applicants must submit recommendations from two licensed physicians. The Department states that the recommendations are used to attest to an applicant's moral character and professional character and reputation. Because the Act requires applicants to be of good moral character, and requires the Department to evaluate and verify the qualifications and applications of applicants, it appears that the use of recommendations by the Department is arguably allowable for these purposes.

The problem arises from the fact that the Department requires that such recommendations be from two licensed physicians. In no instance does the Act require licensed physicians at large to submit such recommendations, or in any way pass judgment upon the qualifications of applicants for licensure.

It is questionable whether the ability of licensed physicians to attest to a person's moral character is any greater than that of any other persons. Conceivably, this requirement could provide a mechanism by which members of the profession could arbitrarily exclude or include certain applicants wishing to enter the profession.

The Joint Committee objects to Rule IV, part (a) because the Department lacks statutory authority to require that recommendations attesting to an applicant's good moral character come from two licensed physicians.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

In relation to the review of this rule, the Joint Committee is suggesting specific legislation to remedy this situation (see Bill Sixteen, pages 237-240).

Rule X of the Rules and Regulations Promulgated for the Administration of the Illinois Medical Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule X, entitled "Acupuncture," sets forth the manner and criteria by which the Department of Registration and Education issues and withdraws authorizations to administer acupuncture in Illinois. Included among the provisions of Rule X are educational requirements for those persons applying for such an authorization, and advertising restrictions for those persons who have been so authorized.

The Illinois Medical Practice Act provides that the Department may issue 2 types of general licenses:

- (1) a license to practice medicine in all of its branches, and
- (2) a license to treat human ailments without the use of drugs or medicines and without operative surgery.

However, there are no provisions in the Act which empower the Department to issue any kind of "authorizations," be they for acupuncture or anything else.

Section 20 of the Illinois Medical Practice Act states that the Act shall not be construed or administered as to "discriminate against any system or method of treating human ailments...." By setting forth special educational and advertising requirements and by requiring a special authorization, Rule X appears to violate this statutory provision by selectively regulating, or discriminating against, the practice of acupuncture.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Repeal

Rule XI of the Rules and Regulations Promulgated for the Administration of the Illinois Medical Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule XI, article III, section 1, category 1, part (a) outlines one of the activities, approved by the Department, for which continuing medical education credit may be earned. This activity is twenty hours of attendance at an education program sponsored by certain approved organizations.

There are two major problems with this provision. First, this rule is very vague in defining which organizations offering continuing medical education are recognized or accepted by the Department in this regard. The Department specifically recognizes some organizations (those accredited by the AMA, LCCME, etc.), but only subject to "further determinations" which may occur "at any time or from time to time." This indicates discretionary power which, when implemented in a rule, necessitates, pursuant to Section 4.02 of the Illinois Administrative Procedure Act, the inclusion in the rule of the standards and criteria by which such discretionary power is exercised.

Also, section 5.1 of the Medical Practice Act requires the Medical Examining Committee to "develop practical and meaningful criteria for defining and describing continuing education requirements," and which meet certain specifications. One of these specifications is that these requirements must be "compatible" with those of "national medical specialty societies." These "practical and meaningful criteria" are to be used by the Examining Committee to make a recommendation to the Department upon which the Department is to base requirements for continuing medical education. In lieu of developing its own requirements "compatible" with those of national medical specialty societies, the Examining Committee and the Department have, in large part, simply accepted accreditation by various outside "societies." This is an improper delegation of the medical education. This, points out the need for proper standards and criteria governing the recognition or acceptance by the Department of organizations offering continuing medical education.

The Joint Committee objects to Rules XI, article III, section 1, category 1, part (a) because it does not provide adequate standards and criteria for the approval of organizations offering continuing medical education.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule XI of the Rules and Regulations Promulgated for the Administration of the Illinois Medical Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule XI, Article III, section 1, category 1, paragraph (b) sets forth certain means by which continuing medical education credits (necessary for renewal of a license) may be earned. One of these methods is verified participation in patient-care review activities of a medical foundation or other physician-organized or sponsored agency established voluntarily to monitor the quality of medical care, "which such foundation or such other organization is approved by the Department." The rule does not provide standards or criteria by which the Department approves or does not approve such foundations or other agencies.

Section 4.02 of the Illinois Administrative Procedure Act requires that any rule which implements a discretionary power, (in this case the approval of foundations or other agencies), must set forth the standards and criteria by which the discretionary power is exercised.

The Joint Committee objects to Rule XI, Article III, section 1, category 1, paragraph (b), because this provision does not provide adequate standards and criteria for the approval of medical foundations or other physician-organized or sponsored agencies established voluntarily to monitor the quality of medical care.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rules and Regulations Promulgated for the Administration of the Illinois Land Sales Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule 1.05(g) provides that a deed to a subdivided lot "shall contain unrestricted warranties of title and other covenants authorized by the jurisdiction in which the subdivision is located." The term "unrestricted warranties" is not sufficiently precise to inform persons affected by the rule of the type of deed required to comply with the rule.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule XI of the Rules and Regulations Promulgated for the Administration of the Illinois Real Estate Brokers and Salesmen License Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule XI provides that the "leasing or renting of real estate wherein the premises are known by the registrant to be in violation of ordinances made for the protection of the public in regard to fire, health, sanitation and other hazards shall be deemed 'unworthiness or incompetence'." As Rule XI currently reads, the rule can be invoked for a single, relatively minor infraction of an ordinance.

Section 4.02 of the IAPA, requires that each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power.

The Department does not have guidelines regulating enforcement of the rule, and it is apparently enforced for single violations. The Department, however, does not indicate under what circumstances the rule is enforced. For this reason, the Joint Committee feels that the rule does not accurately reflect the Department's actual policy.

The Joint Committee objects to Rule XI because it lacks sufficient standards and criteria, and because it does not adequately reflect Department policy.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule XV of the Rules and Regulations Promulgated for the Administration of the Illinois Real Estate Brokers and Salesmen License Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Paragraphs 14(a) and (c) of the Act, (Ill. Rev. Stat. 1977, ch. 111, par. 5731), set out the requirements for registration of nonresident brokers. The basic requirements of the Act are:

- (1) Establishment of a place of business in the foreign state.
- (2) The foreign state must have registration requirements substantially similar to those of Illinois.
- (3) The foreign state must grant the same privileges to Illinois brokers and salesmen.
- (4) Only brokers residing in states bordering Illinois are eligible.

The requirements for licensing of nonresident brokers set forth in Rule XV, Reciprocal Registration, correspond to points 1 and 2 above.

However, Rule XV does not mention the statutory requirement of the granting of similar privileges to Illinois brokers by the foreign state as a condition precedent to reciprocity. Secondly, the language of the Rule indicates that nonresident reciprocal licensing is available to brokers of all the United States, whereas, the Act only provides for licensing of brokers residing in bordering states.

The Joint Committee objects to Rule XV because it fails to comply with statutory requirements.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule I of the Rules and Regulations Promulgated for the Administration of the Illinois Veterinary Medicine and Surgery Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule I, part 1 requires applicants for licensure to practice veterinary medicine and surgery to submit with their applications certified records showing successful completion of at least two years of pre-veterinary collegiate training "at a school, college, university, or department of a university approved by the Department."

While this rule requires that the school, college, university, or department of a university offering the pre-veterinary collegiate training be "approved" by the Department, the Department has stated that in practice, "such training that is deemed acceptable to the institution for entrance into veterinary school is acceptable to the Department." In other words, the Department does not "approve" these institutions; rather, it "accepts" an indirect approval which is determined and bestowed by individual veterinary schools as reflected in their admissions policies. Clearly, the policy stated in the rule and the policy as actually practiced do not coincide.

But even if the policy stated in the rule were followed to the letter, Rule I, part 1, is still objectionable on the grounds of lack of statutory authority. While Sections 6 and 11 of the Illinois Veterinary Medicine and Surgery Practice Act allow the Department to require from applicants proof of the successful completion of two years of pre-veterinary collegiate training, in no instance does the Act authorize or empower the Department to "approve" institutions offering such training, or to require that applicants receive their pre-veterinary collegiate training from such "approved" institutions.

The Joint Committee objects to Rule I, part 1, because it lacks statutory authority, and does not adequately reflect the actual policy of the Department.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

In relation to the review of this rule, the Joint Committee is suggesting specific legislation to remedy this situation (see Bill Thirteen, pages 216-229).

Rule I of the Rules and Regulations Promulgated for the Administration of the Illinois Veterinary Medicine and Surgery Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule I, part 4 requires applicants for licensure to practice veterinary medicine and surgery to file with the Department:

Recommendations from two (2) veterinarians licensed to practice in any state of the United States or in the District of Columbia, certifying as to the good moral character and temperate habits of such applicant.

There are no problems with the Department requiring recommendations of applicants. Section 6 of the Illinois Veterinary Medicine and Surgery Practice Act clearly requires applicants to be of "good moral character and temperate habits." Section 11 of the Act requires the Department to examine and verify the "genuineness" of all applications. Requiring recommendations of the applicants would appear to be a reasonable way of identifying, and determining the moral character and temperate habits of, such applicants.

The problem, however, is that the Department requires these recommendations to be submitted by two (2) licensed veterinarians. In no instance does the Act require this. It is questionable whether licensed veterinarians are better able than other persons to attest to moral character and temperate habits. Conceivably, these provisions in the rules could allow already licensed veterinarians to limit or restrict entry into the veterinary profession.

The Joint Committee objects to Rule I, part 4, because the Department lacks the statutory authority to require that applicants for licensure submit recommendations from licensed veterinarians.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

In relation to the review of this rule, the Joint Committee is suggesting specific legislation to remedy this situation (see Bill Sixteen, pages 237-240).

Rule V of the Rules and Regulations Promulgated for the Administration of the Illinois Veterinary Medicine and Surgery Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule V, section 3, states that an applicant for licensure through reciprocity shall, "at the request of the Examining Committee" appear before the Committee for an oral interview. The Committee shall "examine into and satisfy itself as to the applicant's moral character, temperate habits, professional qualifications and fitness to practice veterinary medicine and surgery and his familiarity with, and understanding of, the applicable laws and these Rules and Regulations....

There are several deficiencies in this rule. First, the phrase "at the request of the Examining Committee" indicates that these interviews are not mandatory, but rather are initiated at the discretion of the Committee. The Department, however, has stated that these interviews are in fact mandatory. It would appear that this rule does not accurately reflect the actual policy of the Department.

Also, the purpose of this oral interview is not defined. While the Committee "shall examine into and satisfy itself" about an applicant's fitness for licensure, it is not specified how this interview affects the actual issuance of licenses.

Potentially the greatest problem with this rule is its lack of adequate standards and procedural safeguards governing the oral interview. While the rule does state the general areas to be "examined" during these interviews, more information is needed. The vagueness of this rule provides the opportunity for arbitrary inclusion or exclusion of applicants from the profession based only upon the unrestricted discretion of the Committee.

The Joint Committee objects to this Rule V, section 3, because the rule does not provide adequate standards and procedural safeguards for the conduct of oral interviews.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule VI of the Rules and Regulations Promulgated for the Administration of the Veterinary Medicine and Surgery Practice Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule VI, entitled "Foreign Graduates," sets forth four requirements which an applicant who is a citizen or other national of a foreign country must meet in order to qualify for licensure to practice veterinary medicine and surgery in Illinois. These requirements are in addition to other requirements which apply to all applicants. Rule VI applies to citizens or other nationals of foreign countries, even if such individuals have graduated from approved veterinary colleges in the U.S.

Sections 3 and 6 of the Illinois Veterinary Medicine and Surgery Practice Act, on the other hand, refer to graduates of foreign veterinary colleges, even if such graduates might also be U.S. citizens. The act appears to be concerned with the quality of the veterinary education an applicant might receive at a foreign veterinary college, while Rule VI seems concerned with the national origin of the applicant.

The Act clearly allows the Department to examine and question the quality of veterinary training received by an applicant at a foreign veterinary college; in no instance, however, does the Act authorize the Department to selectively regulate an applicant in special ways based solely upon the applicant's national origin or citizenship.

The Joint Committee objects to Rule VI because the Department lacks the statutory authority to establish special license requirements which apply only to citizens or other nationals of a foreign country.

Date Agency Response Received: February 20, 1981

Nature of Agency response: Will Amend

Rule 6 of the Rules and Regulations Promulgated for the Administration of the Illinois Weather Modification Control Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule 6(1) of the "Rules and Regulations Promulgated for the Administration of the Illinois Weather Modification Control Act," provides that issuance of licenses shall be based on the applicant's character, knowledge of weather modification principles and techniques, and experience in their application. Rule 6(3) states, in part, that "the Department shall evaluate the applications, including the responses from references, and such other relevant data about applicants as it possesses or discovers." This rule also provides that the Director shall issue a license to each applicant who pays the license fee established by Section 13 of the Act and who "demonstrates to the satisfaction of the Department the competence, by virtue of character, knowledge and experience, necessary to engage in weather modification operations." As these rules currently read, the judgement as to an applicant's character, and the determination of whether a license will or will not be granted, lie within the discretion of the Department.

Section 4.02 of the Illinois Administrative Procedure Act provides "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected." Therefore, the Joint Committee objects to rule 6(1) and 6(3) because the rules lack sufficient standards and criteria for judging, evaluating and granting licenses.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

Rule 7 of the Rules and Regulations Promulgated for the Administration of the Illinois Weather Modification Control Act [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: November 18, 1980

Specific Objections:

Rule 7(4) of the "Rules and Regulations Promulgated for the Administration of the Illinois Weather Modification Control Act" provides that "the permittee shall confine weather modification activities within the conditions and limits specified in the permit and those imposed by the Act and those Rules, except to the extent the conditions and limits are modified by the Department." The rule also states that "the Department may condition and limit permits as to target area, time of the operation, materials and methods to be used in conducting the operation, emergency shutdown procedure and such other operational requirements as may be established by the Department." As this rule currently reads, the determination of whether conditions or limits will or will not be imposed on the permittee lies within the discretion of the Department.

Section 4.02 of the Illinois Administrative Procedure Act provides "Each rule which implements a discretionary power to be exercised by an Agency shall include the standards by which the Agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected." Therefore, the Joint Committee objects to Rule 7(4) because the rule lacks sufficient standards and criteria for the limiting or conditioning of permits.

Date Agency Response Received: February 20, 1981

Nature of Agency Response: Will Amend

**Department of Revenue**

Article 2 of the Retailers' Occupation Tax Act as it pertains to the Machinery and Equipment Exemption

Initial Publication in Illinois Register: December 21, 1979

Date Second Notice Received: April 10, 1980

Joint Committee Objection: May 13, 1980

Specific Objection:

The last paragraph of Part 9(D) of Article No. 2 of ROTA which states, "[a]n item of machinery or equipment which initially is used primarily in manufacturing or assembling and is later converted to primarily nonexempt uses will become subject to tax...."

The Joint Committee objects to proposed Article 2, Part 9(D) which requires the recapture of tax on machinery which is later converted to a non-exempt use because it is contrary to the legislative intent of Public Act 81-991. P.A. 81-991 amended Section 2 of ROTA which exempted from tax the proceeds from the sale of machinery used "directly and exclusively" in manufacturing to exempting from the tax the proceeds from the sale of machinery used "primarily" in manufacturing.

Date Agency Response Received: May 30, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: June 13, 1980

Effective Date: June 1, 1980

Article 2 of the Retailers' Occupation Tax Act as it pertains to the Definition of Foods and Medicines which Qualify for a Reduced Rate of Tax

Initial Publication in Illinois Register: December 21, 1979

Date Second Notice Received: April 10, 1980

Joint Committee Objection: May 13, 1980

Specific Objection:

Article No. 2 10(B) which states,

Any food sold by a food service establishment shall not qualify for the reduced rate. A food service establishment is a restaurant, coffee shop cafeteria, short-order cafe or other similar place in which food and/or drink is sold for immediate consumption: Provided, that delicatessens, markets, dairys and bakeries shall not be considered food service establishments except when selling hot foods or hot food products.

The Joint Committee objects to proposed Article No. 2 10(B) because the differentiation between the sale of similar items based upon the type of retail establishment at which the sale is made is in violation of P.A. 81-3rd S.S.-1 and because the Department's policy in this area is vague,

confusing and not fully stated in this rule as required by Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: May 30, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: June 13, 1980

Effective Date: June 1, 1980

In response to the refusal to modify or withdraw this rulemaking, the Joint Committee is suggesting specific legislation to remedy this situation (see Bill Nine, pages 166-191).

Rules No. 1, 2, 3 and 5 of the Bingo License and Tax Act [Emergency]

Publication in Illinois Register: April 18, 1980

Effective Date: April 8, 1980

Joint Committee Objection: May 13, 1980

Specific Objection:

Emergency Rules No. 1, 2, 3 and 5. This emergency rulemaking contained many amendments including the addition of a one-year membership requirement for bingo workers and the prohibition of back to back bingo games unless there is at least a two hour interval between games.

The Joint Committee objects to this emergency rulemaking because it does not meet the requirements of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.02. Section 5.02 provides that emergency rulemaking procedures may only be used "[w]here an agency finds that an emergency exists which requires the adoption of rules upon fewer days notice than is required by Section 5.01..." The Department explains that these rules are necessary prior to the June 1, 1980 license renewal period. However, the Department has been aware of the problems these rules are intended to correct for several months. The Department could have adopted these rules by use of proposed rulemaking procedures prior to June, 1980.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

In response to the refusal of the agency to amend or repeal this rule, the Joint Committee is recommending specific legislation to remedy this situation (see Bill Seven, pages 158-163).

Rules No. 1, 2, 3 and 5 of the Bingo License and Tax Act

Initial Publication in Illinois Register: April 18, 1980

Date Second Notice Received:

Joint Committee Objection: August 22, 1980

Specific Objections:

1. Proposed Rule No. 1(C) which states in part:

No license will be issued at any location for a time period which begins less than two hours from the conclusion of a prior game.

Proposed Rule No. 1(D)(14), which requires persons participating in the operation of a bingo game to have been a member of the licensee for at least one year preceding the date of play.

The Joint Committee objects to these sections because the Department is without authority under the Bingo License and Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 1101 et seq.) to impose such requirements.

2. Proposed Rule No. 2, which requires a separate license for an organization wishing to provide premises to a bingo licensee for the conduct of bingo. Under this rule, for example, if an American Legion auxiliary wished to conduct a weekly bingo game in the American Legion hall, both organizations would be required to obtain licenses so that a single bingo game could be conducted.

The Joint Committee objects to this proposed rule because it was not the General Assembly's intent to impose this strict dual licensure requirement in cases where it would impose severe financial hardship on qualified organizations without furthering the legislative purpose of regulating the conduct of bingo.

Date Agency Response Received: September 8, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: September 19, 1980

Effective Date: September 8, 1980

In response to the refusal of the agency to amend or repeal this rule, the Joint Committee is recommending specific legislation to remedy this situation (see Bill Seven, pages 158-163).

## CONSTITUTIONAL OFFICES

### Attorney General

#### Buyers Club Rules

Initial Publication in Illinois Register: April 25, 1980

Date Second Notice Received: June 20, 1980

Joint Committee Objection: July 22, 1980

Specific Objections:

1. Proposed Rule 202(g), which declares unlawful the practice of inducing prospective buyers to sign contracts "upon the seller's representation that if the buyer will furnish seller the names of other prospective buyers, the buyer will receive any cash rebate.... This prohibition applies in all cases where rebates are offered, regardless of whether such promised rebates are contingent upon the seller's ability to enroll the referred persons into the buyers club."

The Joint Committee objects to proposed Rule 202(g) because Section 2A of the Consumer Fraud and Deceptive Business Practices Act, Ill. Rev. Stat. 1979, ch. 121 1/2, par. 262A, prohibits such practice only when the rebate "is contingent upon seller's ability to sell like or identical merchandise to the named prospective buyers...." The Office of the Attorney General is without statutory authority to so expand the express terms of the statute.

2. Part III: Financial Requirements, and Part IV: Required Filings With the Attorney General.

The Joint Committee objects to Parts III and IV of the proposed rules because the Office of the Attorney General is without statutory authority under the Consumer Fraud and Deceptive Business Practices Act to impose such requirements on an industry-wide basis.

Date Agency Response Received: September 2, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: September 5, 1980

Effective Date: October 1, 1980

In response to the refusal of the agency to modify or withdraw this rulemaking, the Joint Committee is suggesting specific legislation to remedy the objection (see Bill Ten, pages 192-194).

## OTHER AGENCIES

### Illinois Commerce Commission

General Order 52 under the Illinois Motor Carrier of Property Law, Bills of Lading [Emergency]

Publication in Illinois Register: January 11, 1980

Effective Date: January 1, 1980

Joint Committee Objection: February 20, 1980

Specific Objections:

1. Section 1 of General Order 52 which prescribes the information which must be contained in all freight bills.

The Joint Committee objects to Section 1 of this emergency rulemaking because it could have been adopted by use of the proposed rulemaking procedures provided in the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.01, as amended. The Commission has had the authority to issue this type of regulation since 1977. The Commission has failed to describe any emergency situation which requires the adoption of this rulemaking. Therefore, this emergency rulemaking does not meet the requirements of Section 5.02 of the Illinois Administrative Procedure Act which provides that emergency rulemaking procedures should only be used "where an agency finds that an emergency exists which requires the adoption of a rule upon fewer days than is required by Section 5.01...."

2. Section 2 of General Order 52 which prescribes the information which must be contained in bills of lading.

The Joint Committee objects to Section 2 of this emergency rulemaking because most of its provisions merely paraphrase the requirements of Section 18-706 of the Illinois Vehicle Code, Ill. Rev. Stat. 1979, ch. 95 1/2, par. 18-706 as amended. The Commission has failed to describe an emergency situation which requires the adoption of this rulemaking. Therefore, this emergency rulemaking does not meet the requirements of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, as amended, which provides that emergency rulemaking procedures should only be used "where an agency finds that an emergency exists which requires the adoption of a rule upon fewer days than is required by Section 5.01...."

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

General Order 205, Governing Smoking in Illinois Passenger Train Stations

Initial Publication in Illinois Register: October 12, 1979

Date Second Notice Received: February 11, 1980

Joint Committee Objection: March 26, 1980

Specific Objection:

The Joint Committee objects to proposed General Order 205 because it exceeds the statutory authority granted by Section 57 of an Act concerning public utilities (Ill. Rev. Stat. 1979, ch. 111 2/3, par. 61).

Date Agency Response Received: June 26, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: July 7, 1980

Effective Date: June 25, 1980

In response to the refusal of the agency to modify or withdraw this rulemaking, the Joint Committee is suggesting specific legislation to remedy this situation (see Bill Eleven, pages 195-202).

## **Office of the Commissioner of Banks and Trust Companies**

### **Article I "Electronic Fund Transfers"**

Initial Publication in Illinois Register: December 14, 1979

Date Second Notice Received: January 29, 1980

Joint Committee Objection: February 20, 1980

#### **Specific Objections:**

1. Section 4.03 of Article I, Electronic Fund Transfers. This Section requires a bank or financial institution that shares an Automatic Teller Machine with the customers of another bank to enter into a written agreement concerning such sharing. In addition, the agreement must be filed with the Commissioner and must specify that the parties will accept the Commissioner as final arbitrator in case of a dispute over the terms of the agreement.

The Joint Committee objects to this proposed Section because the Commissioner does not have the statutory authority to regulate the sharing, by banks, of Automatic Teller Machines with financial institutions.

2. Section 7.01(c) of Article I, Electronic Fund Transfers. This Section requires that a Notice of Deployment of a point of sale terminal be filed 30 days prior to the deployment of the terminal. Section 8-100 of the Electronic Fund Transfer Transmission Facility Act (Public Act 81-949, effective January 1, 1980) requires that such a notice must be filed when a point of sale terminal is deployed.

The Joint Committee objects to this proposed Section because the requirement that a Notice of Deployment of a point of sale terminal be filed 30 days prior to its deployment is beyond the Commissioner's statutory authority.

3. Section 7.01(d) of Article I, Electronic Fund Transfers, requires that a Notice of Deployment of a point of sale terminal contain certain specified information. Section 8-100 of the Electronic Fund Transfer Transmission Facility Act, *supra*, requires that the Notice shall include only a fraction of the information required by Section 7.01(d) of Article I.

The Joint Committee objects to Section 7.01(d) of Article I, because the requirement that the additional specified information be included in a Notice of Deployment of a point of sale terminal is beyond the Commissioner's statutory authority.

Date Agency Response Received: March 26, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: April 4, 1980

Effective Date: April 4, 1980

In response to the refusal of the agency to modify or withdraw this rulemaking, the Joint Committee is suggesting specific legislation to remedy the objection (see Bill Twelve, pages 203-215).

Article I, "Electronic Fund Transfers," Chapter 5, "Consumer Protection"  
[Emergency]

Publication in Illinois Register: March 14, 1980

Effective Date: March 5, 1980

Joint Committee Objection: April 22, 1980

Specific Objection:

Sections 5.03, 5.04, 5.06, 5.07, 5.09 and 5.12. These sections involve disclosure requirements for financial institutions, the issuance of access devices, the contents of the initial disclosure of terms and conditions, notice of a change in terms or conditions, preauthorized transfers and an appendix of model disclosure clauses.

The Joint Committee objects to these rules because they have been adopted in violation of Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02) which prohibits the adoption of an emergency rule more than once in any 24 month period. These rules had previously been adopted as emergency rules on November 30, 1979.

Date Agency Response Received: May 29, 1980

Nature of Agency Response: Refused to Amend or Repeal

Article I, "Electronic Fund Transfers," Chapter 5, "Consumer Protection,"  
Emergency Rules b(1)(iv), b(3)(f) and (g) [Emergency]

Publication in Illinois Register: May 16, 1980

Effective Date: May 10, 1980

Joint Committee Objection: June 17, 1980

**Specific Objection:**

Emergency Article I, "Electronic Fund Transfers," Chapter 5, "Consumer Protection," Rules b(1)(iv), b(3)(f) and (g). These emergency rules duplicate amendments made by the Federal Reserve Board to its Consumer Protection Regulation E, effective May 10, 1980.

The Joint Committee objects to this emergency rulemaking because they were promulgated in violation of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.02. That Section prohibits the promulgation of the same emergency rule within a 24 month period. Since Section 5.08 of the Commissioner's Consumer Protection Rules was filed as an emergency rule on March 5, 1980, the promulgation of any of its subsections through the use of emergency rulemaking at this time is precluded.

**Date Agency Response Received:** July 31, 1980

**Nature of Agency Response:** Refused to Amend or Repeal

Article I, "Electronic Fund Transfers," Chapter 5, "Consumer Protection"  
[Emergency]

**Publication in Illinois Register:** June 20, 1980

**Effective Date:** June 10, 1980

**Joint Committee Objection:** July 22, 1980

**Specific Objection:**

Emergency Article I, "Electronic fund Transfers," Chapter 5, "Consumer Protection," Section 5.08, Rule a(3). This emergency rule duplicates amendments made by the Federal Reserve Board to its Consumer Protection Regulation E, effective May 10, 1980.

The Joint Committee objects to this emergency rulemaking because it was promulgated in violation of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005.02. That Section prohibits the promulgation of the same emergency rule within a 24 month period. Since Section 5.08 of the Commissioner's Consumer Protection Rules was filed as an emergency rule on March 5, 1980 and May 6, 1980, the promulgation of any of its subsections through the use of emergency rulemaking at this time is precluded.

**Date Agency Response Received:** No Response Received

**Nature of Agency Response:** Refused to Amend or Repeal

**State Board of Elections**

Regulation 1-3, Requirement that Objections to and Withdrawals of Nominating  
Petitions Be Filed in the Principal Office of the State Board of Elections and  
Increases Office Hours for Such Filings to 5:00 P.M. on Saturdays [Emergency]

Publication in Illinois Register: December 21, 1979

Effective Date: December 7, 1979

Joint Committee Objection: January 9, 1980

Specific Objection:

Emergency Rule 1-3. This rule allows objections to and withdrawals of nominating petitions to be filed only at the principal office of the State Board of Elections. Prior to this emergency rulemaking, Rule 1-3 provided that such objections or withdrawals filed with the State Board of Elections would be accepted either at the Board's principal office or at its branch office in Chicago.

The Joint Committee objects to this emergency rulemaking because it is in violation of Section 5.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1005.02 in that a situation which reasonably constituted a threat to the public interest, safety or welfare did not exist. Rather, the action was taken to reflect a recent change in the Board's policy and could have been implemented by regular procedures.

Date Agency Response Received: No Response Received

Nature of Agency Response: Refused to Amend or Repeal

Repeal and New General Rules and Regulations Under the Campaign Disclosure Act

Initial Publication in Illinois Register: January 25, 1980

Date Second Notice Received: March 31, 1980

Joint Committee Objection: April 22, 1980

Specific Objections:

1. Proposed Section 1.03. This section provides in part that a person or whoever does not qualify as a political committee by making a contribution or expenditure from personal income regardless of the amount of the donations.

The Joint Committee objects to this rule because it is beyond the Board's statutory authority insofar as it is inconsistent with Section 9-1.9 of the Election Code. That section requires individuals who accept contributions or make expenditures of more than \$1,000 to file as a political committee.

2. Proposed Section 1.04 (3). This section excludes from the definition of "anything of value" any regular publication by a membership organization, labor union, or corporation to its officers, employees, members or stockholders. The Section distinguishes between such regular publications and publications of an extraordinary or special nature.

The Joint Committee objects to this section because the Board lacks the statutory authority to exempt such publications from the definition of "anything of value" as stated in Section 9-1.12 of the Election Code.

Date Agency Response Received: July 8, 1980

Nature of Agency Response: Refused to Modify or Withdraw

### **Environmental Protection Agency**

#### Criteria for Identification of Hazardous Wastes [Emergency]

Publication in Illinois Register: March 28, 1980

Effective Date: April 1, 1980

Joint Committee Objection: April 22, 1980

#### **Specific Objection:**

Criteria for Identification of Hazardous Waste which establishes the testing procedures the Environmental Protection Agency will use to determine whether or not particular waste is hazardous.

The Joint Committee objects to this proposed emergency rulemaking because it could have been adopted by use of the proposed rulemaking procedures and, therefore, does not meet the requirements of Section 5.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: July 15, 1980

Nature of Agency Response: Refused to Amend or Repeal

#### Criteria for Identification of Hazardous Wastes

Initial Publication in Illinois Register: March 28, 1980

Date Second Notice Received: July 15, 1980

Joint Committee Objection: August 22, 1980

#### **Specific Objection:**

Proposed Sections 3.1.2, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 3.5.2, 3.5.3, and 3.6.2, which set forth identification methods for various types of hazardous wastes. The Agency is adopting by reference methods established by other agencies or associations, such as the American Public Health Association. However, the methods themselves are not set forth in the rules, nor are the documents which the Agency is adopting by reference on file with the Office of the Secretary of State.

The Joint Committee objects to the above-mentioned proposed sections because they are in violation of Section 5(b) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1005(b).

The policies adopted by reference constitute "rules" as that term is defined in the IAPA, and those policies must either be included in the text of the Agency's rule, or properly identified and filed with the Office of the Secretary of State pursuant to Section 6.01 of the IAPA.

Date Agency Response Received: August 27, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: August 27, 1980

Effective Date: August 27, 1980

Partially as a result of this objection, the Joint Committee is recommending specific legislation to clarify the requirements of the Administrative Procedure Act concerning incorporation by reference (see Bill One, pages 140-142).

## **Board of Higher Education**

### Rules for the Health Service Education Grants Act

Initial Publication in Illinois Register: October 19, 1979

Date Second Notice Received: December 14, 1979

Joint Committee Objection: January 9, 1980

#### **Specific Objections:**

1. Proposed Section 2.00, Class VII Grants, of the rules for Health Services Education Grants Act which establishes a special minority grant program.

The Joint Committee objects to Section 2.00, Class VII Grants, because it exceeds the Board's statutory authority established in the Health Services Education Grants Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 821 et seq.). The Act requires that "[q]ualifications for grants shall be on the basis of an increase in the number of Illinois resident enrollees. The amount or proportion of increases shall be determined by the Board of Higher Education for each class of institution." It also requires the funds to be distributed equitably to the institutions. The establishment of a grant based on enrollment of Illinois minority residents goes beyond the statutory criteria for establishing grant programs.

2. Proposed Section 4.00, Grant Amounts, of the rules for Health Service Education Grants Act which does not detail the specific grant amount per student for each class of institution and grant.

The Joint Committee objects to Proposed Section 4.00 Grant Amounts, of these rules because it does not state the Board's policy concerning specific amounts of grant aid to the particular institutions. The specific dollar amounts of these grants constitute statements of policy by the Board, and are "rules" as that term is defined in Section 3.09 of the

Illinois Administrative Procedure Act, Ill. Rev. Stat. 1977, ch. 127, par. 1003.09. Under Section 4(c) of the Act, "[n]o agency rule is valid or effective against any person or party, no may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: February 13, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: February 22, 1980

Effective Date: February 11, 1980

#### **Pollution Control Board**

Part IX (New Source Performance Standards) and Part X (Emission Standards for Hazardous Air Pollutants) of Chapter 2: Air Pollution [Peremptory]

Publication in Illinois Register: December 7, 1979

Effective Date: November 28, 1979

Joint Committee Objection: January 9, 1980

Specific Objection:

Pursuant to Section 9.1(c) of the Environmental Protection Act, Ill. Rev. Stat. 1978 Supp., ch. 111 1/2, par. 1009.1, "[e]ach such Board rule shall be adopted...at the next scheduled board meeting following promulgation of the corresponding federal regulation and filed with the Secretary of State in accordance with the [IAPA] within 60 days thereafter." However, through this rulemaking's use of the term "as amended" after each citation to the federal regulations, the Board has acknowledged that it does not intend to publish a notice in the Illinois Register each time the federal rules are amended.

The Joint Committee objects to this peremptory rulemaking because it is filed in violation of Section 9.1(c) of the Environmental Protection Act.

Date Agency Response Received: February 19, 1980

Nature of Agency Response: Amended

Rule 101: Definitions; Rule 205: Sound Emitted to Class C Land; Rule 206: Impulsive Sound; Rule 209: Compliance Dates

Initial Publication in Illinois Register: March 7, 1980

Date Second Notice Received: August 1, 1980

Joint Committee Objection: August 22, 1980

Specific Objection:

The removal of Rule 206(b) in the second notice from the rulemaking. Rule 206(d) 'froze' 1000 feet of land around the property source at the original land use classification to create, in effect, a buffer zone.

The Joint Committee objected to this removal because it significantly altered the rulemaking without providing notice and opportunity for comment which is in violation of Section 5.01 of the Illinois Administrative Procedure Act.

Date Agency Response Received: September 22, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: September 26, 1980

Effective Date: September 26, 1980

### **Illinois Racing Board**

#### Repeal, Thoroughbred Rules 278 through 288 and Harness Rules 2.12 through 2.19; Adoption of new Chapter B13, Residency Rules

Initial Publication in Illinois Register: December 7, 1979

Date Second Notice Received: February 28, 1980

Joint Committee Objection: March 26, 1980

#### **Specific Objections:**

Proposed Rules B13.3 and 13.5 which require the organization licensee to determine the percentage of its employees who have been residents of the State of Illinois for two or more years and to maintain a written description of that procedure.

The Joint Committee objects to these rules because, by requiring each organization licensee to develop its own definition of "residency," it is in violation of the legislative intent of Section 22 of the Illinois Horse Racing Act of 1975.

Date Agency Response Received: June 26, 1980

Nature of Agency Response: Modified

Publication as Adopted in Illinois Register: July 7, 1980

Effective Date: June 30, 1980

### **Illinois State Scholarship Commission**

#### Policies and Procedures for Public Statements at Commission Meetings, Time Limits on Appeals, and an Amendment Concerning Calculation of BEOG Values

Initial Publication in Illinois Register: April 11, 1980

Date Second Notice Received: June 5, 1980

Joint Committee Objection: July 22, 1980

Specific Objection:

The Notice of Proposed Rulemaking which does not adequately set forth the purpose of the rulemaking, and the text of the rulemaking which does not provide sufficient material to meet the requirements of Section 5.01 of the Illinois Administrative Procedure Act.

The Joint Committee objects to this proposed rulemaking because it is in violation of Section 5.01 of the Illinois Administrative Procedure Act. Section 5.01(a) of the Act requires the notice of proposed rulemaking to include a complete description of the subjects and issues involved and the old and new materials of a proposed amendment to a rule.

Date Agency Response Received: August 7, 1980

Nature of Agency Response: Refused to Modify or Withdraw

Publication as Adopted in Illinois Register: August 22, 1980

Effective Date: August 9, 1980

## REVIEW OF PROPOSED RULEMAKING

During 1980, the Joint Committee opened files on 568 proposed rulemakings of state agencies. The rulemakings ranged from a few paragraphs to hundreds of pages of new rules. As indicated in Table Six on pages 27 - 28, there was a substantial increase in the number of proposed rulemakings during 1980 over both 1978 and 1979. The decrease from 1978 to 1979 seems to have been only temporary.

The primary thrust of Joint committee review of proposed rules continues to be that of statutory compliance and legislative intent. These two categories still provide much of the controversy between the Joint Committee and the state agencies. The other major area of controversy has been the exercise of agency discretion. Section 4.02 of the Administrative Procedure Act which was added by Public Act 80-1129 (effective July 1, 1980), states:

Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected.

The Joint Committee carefully scrutinized agency rulemakings and issued several objections during the past year where sufficient standards were not adopted by the agency.

This year was the first full year in which the Joint Committee operated under the two notice period procedure. The first notice period allows for public comment and changes by the agency in response to that comment. Then, the second 45-day notice period is devoted exclusively to the review of the rulemaking of the Joint Committee. This procedure was initiated by an amendment to the Administrative Procedure Act which became effective October 1, 1979.

The Joint Committee amended its operating rules to interpret this statutory change. These rules which were revised and reformatted during 1980 are presented as Appendix C in this report (see pages 278-285). Section 220.5 of the Joint Committee's rules indicates the information which must be included in the second notice. This is the basic starting

point for the Committee's review of proposed rulemaking. It requires that the following information be included:

- 1) The name of the agency.
- 2) The title of the proposed rulemaking.
- 3) The date of the first notice.
- 4) The text and location of any changes made in the rule during the first notice period.
- 5) If requested by the Committee as provided in Section 220.3, an analysis of the economic and budgetary effects of the proposed rulemaking.
- 6) A response to any recommendations made by the State Library for changes in the rules to make them comply with the codification scheme.
- 7) The name of the person who will respond to Committee questions regarding the proposed rulemaking for the agency.

The Joint Committee staff reviews each second notice to make sure that it is complete and compares it carefully with the notice published in the Illinois Register. The economic and budgetary analysis is also examined for its basic adequacy before the second notice is accepted.

Agencies are also requested to include some additional information in second notices. This information which is listed in Section 220.6 includes:

- a) An evaluation of all of the comments on the proposed rulemaking received by the agency from interested persons during the first notice period. This evaluation should include:
  - 1) A list of all of the persons and groups which made comments or which requested the opportunity to make comments.
  - 2) A list of all of the specific criticisms and suggestions which were raised in the comments.
  - 3) The agency's evaluation of each of the specific criticisms and suggestions.
  - 4) A statement that the agency has considered all of the comments which were received during the first notice period.
- b) An analysis of the expected effects of the proposed rulemaking, which should include at least these items:
  - 1) Impact on the public affected groups.
  - 2) Changes in the agency's programs or structure which will result from the rule.
- c) A justification and rationale for the proposed rulemaking, which should include at least these items:
  - 1) Changes in statutory language which require the rulemaking.
  - 2) Changes in agency policy, procedures, or structures which require the rulemaking.
  - 3) Other rules and proposed rules of the agency, which relate to the rulemaking.

- 4) Federal laws, rules, or funding requirements, which may affect the rulemaking.
- 5) Court orders or rulings which relate to the rulemaking.

If this information is not included in the second notice, it is promptly requested from the agency, since it is essential for a complete and thorough review of proposed rules. The information about public comments on the rules is particularly useful in insuring that agencies are being responsive to the public.

The basic standards by which the Joint Committee reviews proposed rules have remained the same as during the previous year, although they have been reformatted in the most recent amendments to the Joint Committee's rules. The staff reviews the proposed rules based on these criteria and presents a report of its findings, including recommendations and agreements reached, to the Committee at its monthly meeting.

The review of proposed rulemaking has resulted in numerous changes in agency rules. These changes are necessary to bring the rules into complinace with statutory language and to meet the Joint Committee's review standards. Many of the changes have resulted from voluntary agreements by agencies without necessitating a formal objection by the Committee.

The specific statements of objection issued by the Committee are listed in the preceding section of this report (see pages 36 - 73). These objections have served the purpose of getting changes made in the rules, although the incidence of agencies refusing to withdraw or modify objectionable rules has increased.

The more important of the 25 objections issued by the Joint Committee to proposed rulemakings during 1980 involved day release regulations by the Department of Corrections (see page 40), rules regulating credit unions by the Department of Financial Institutions (see pages 41 - 42), clinic services and pharmacy services regulations proposed by the Department of Public Aid in relation to medicaid reimbursement (see pages 44 - 45), program standards for local health departments by the Department of Public Health (see pages 47 - 48), rules proposed by the Department of Revenue to implement the reduction of sales tax on food and medicine (see pages 60 - 61), and rules to regulate buyers clubs issued by the Attorney General (see pages 62 - 63). In a number of these instances, the Committee is recommending or suggesting remedial legislation as a

result of the agencies' failure to modify or withdraw the proposed rulemakings in response to the objections.

The continuing review of each rulemaking proposed by state agencies provides the greatest opportunity for legislative input into the rulemaking process. It is likely that the effectiveness of this review will increase with the new power to delay rules which are found to be serious threats to the public interest, safety or welfare. Agencies are likely to be more responsive to the Committee's questions and objections with this new power available. It will also provide a means of referring difficult issues directly to the full General Assembly for debate and resolution.

## REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Joint Committee's review of emergency and peremptory rulemaking was initiated in the fall of 1979, so 1980 was the first full year of this type of review by the Committee. Since these rulemaking procedures allow agencies to bypass the public comment period required under the normal rulemaking process, the Joint Committee is concerned that these procedures only be used in the limited circumstances specified in the Administrative Procedure Act.

During 1980, the Joint Committee reviewed each of the 97 emergency and 17 peremptory rules which state agencies adopted. The slight reduction in the number of emergency rules adopted by agencies compared to 1979, may indicate that the Committee's review was useful in limiting the use of this process by agencies, but the reduction was small and should not be viewed as too significant. The Committee issued eight formal objections to emergency and peremptory rulemakings during 1980, which indicates that improper use of these extraordinary procedures is continuing.

The primary focus of the Committee's review of emergency and peremptory rules is insuring that they comply with the requirements of Sections 5.02 and 5.03 of the Administrative Procedure Act. These sections require specific conditions which must exist before the agency can properly adopt rules through these procedures. Section 5.02 on emergency rulemaking states:

"Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days notice than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing...

This section basically requires (1) the existence of an emergency affecting the public, (2) a necessity for the rule in direct response to the emergency, (3) time constraints which make the adoption of the rule through the normal rulemaking process impossible, and (4) a written statement by the agency of how these conditions have been met. It is these requirements which the Joint Committee seeks to review in its examination of emergency rules.

Similar conditions are specified for the adoption of rules through the peremptory rulemaking process. Section 5.03 of the Act states:

"Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with the general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where an agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking...

Under this language, three conditions must be met for an agency to adopt a rule through the peremptory rulemaking process. Each of these conditions must be met, not just one of the conditions. (1) The rules must be required by federal or court action. (2) The agency must be precluded from adopting the rules under the normal rulemaking process; it must be impossible for the agency to go through the process, not just inconvenient or even useless. (3) The agency must be precluded from exercising any discretion as to the content of the rule. The language limits the adoption of peremptory rulemaking to very specific circumstances, so that the public information value of the normal rulemaking process as well as the public participation and input values are not bypassed.

In addition to reviewing these rules for compliance with these procedural requirements, the Committee also examines the rules based on the criteria used in the normal review of proposed rules. Especially in the case of peremptory rules, this review by the Joint Committee may be the only formal review procedure outside the adopting agency for these rules.

The Joint Committee adopted rules which listed specific criteria for the review of emergency and peremptory rulemaking in the fall of 1979. These rules were rewritten and revised to comply with the codification system during 1980 and are presented in this report as Appendix C (see pages 286-295). The criteria for reviewing emergency rulemakings are listed in Sections 230.4 and 230.5, while the parallel criteria for reviewing peremptory rulemakings are listed in Sections 240.5 and 240.6.

A consistent problem which the Joint Committee has uncovered in reviewing a number of sets of emergency rules, has involved "self-inflicted" emergencies. These are situations in which agencies have adopted emergency rules only because of internal

delays or other factors over which the agency had control. The Committee has objected to these types of emergency rulemakings on a number of occasions — see, for example, the objection to the Department of Children and Family Services' Regulation 9.04, Administration of Children's Trust Funds (page 37), and the objection to the Department of Financial Institutions' emergency adoption of Section Twenty of the Rules and Regulations Governing the Enforcement of the Consumer Installment Loan Act (pages 40 - 41). Difficulties caused by the agency itself cannot be used to justify the use of an extraordinary process which avoids public information and input.

Another problem in the adoption of emergency rules by agencies has been the adoption of the same rule more than once within two years. This is expressly prohibited by Section 5.02 of the Act to further limit the occasions on which agencies can resort to the emergency rulemaking process. Illustrating this problem are the three objections issued to the emergency adoptions by the Commissioner of Banks and Trust Companies of his electronic fund transfer rules (see pages 66 - 67). Strict compliance with this prohibition should reduce the abuse of the emergency rulemaking process by state agencies.

The two peremptory rulemakings objected to by the Committee — the Pollution Control Board's amendments to Part IX and Part X of its air pollution regulations (page 71) and the Department of Aging's amendments to its rules on the administration of the Department (pages 36 - 37) — both involved situations in which the agency adopted federal regulations. A number of interesting issues concerning intergovernmental relations are involved in these types of situations.

While the number of objections issued from the review of emergency and peremptory rulemakings is not large, the very fact that the Committee reviews these rulemakings may be having an impact on the procedures followed by agencies. Careful scrutiny of agencies' use of these extraordinary procedures will continue.

## FIVE-YEAR REVIEW PROGRAM

One of the most difficult and complex responsibilities assigned to the Joint Committee on Administrative Rules is the review of all existing rules of all state agencies at least once every five years by specific subject areas. This five-year review is mandated by Section 7.08 of the Administrative Procedure Act, which lists fourteen subject areas as the basis for the organization of the review and four additional criteria which the Joint Committee must consider in this review. The type of review conducted under this mandate is more substantive, more programmatic and potentially more significant than the on-going monitoring of newly proposed rules, but it is also more difficult to organize and manage.

During 1980, the Joint Committee completed its review of rules in the subject area of regulation of occupations and initiated the review of rules in the three other subject areas scheduled for review during the first year of the program. The Committee also revised its rules for conducting the program, simplified and reorganized the classification of rules into the various subject areas and rearranged the review schedule. These changes were intended to make the program easier to manage for both the Committee and the agencies whose rules are being reviewed.

This section of the Annual Report will first discuss the general organization of the program and then present in detail the results of the review of rules classified under regulation of occupations. The subject areas which are currently under review will be discussed next. The final part of this section will focus on the changes and revisions made in the program itself during 1980.

### General Organization

The general organization of the five-year review program is largely determined by the authorizing statute. Section 7.08 of the Administrative Procedure Act requires the Committee to consider all the existing rules of all state agencies by subject areas. The Act also provides a list of criteria which should be considered in this review. The list includes reducing or eliminating conflicts or overlaps between rules and regulatory jurisdictions, streamlining the rules to reduce their number and bulk, and correcting typographical, grammatical and technical errors.

Once the rules in a given subject area are identified, the review process begins by asking the agencies to respond to several general, basic questions about each set of rules. These questions are listed in Section 250.10 of the Committee's Operational Rules (see Appendix C, pages 296-304). They request information about the statutory authorization, economic effects, program relationships, public need, and programmatic costs of each set of rules. At this point, a background materials report is prepared as well. It presents summaries of the rules, the text of the rules and the statutory authority for each set of rules. This is necessary due to the poor availability of the text of rules in Illinois, although the codification system should help remedy this problem.

Subcommittees of the Joint Committee are usually formed at this early point in the review process to hold public hearings on the various sets of rules. These public hearings provide an opportunity for interested individuals, businesses, associations and other groups who are affected by, or concerned about, the rules to present their views of the benefits or deficiencies of the rules. They serve a useful informing function for the Committee members and provide additional, independent information which is utilized in the review process.

The Joint Committee staff then conducts an in-depth review of the rules and raises specific questions about each set of rules. These questions address a wide range of legal, grammatical, programmatic and technical issues about numerous specific provisions in the rules. Each agency is asked to respond to these detailed questions in writing. Then, a staff-level conference is held to discuss these questions and responses.

Following this staff-level exchange, a comprehensive written preliminary report is prepared for the Committee members. The report details the questions raised by the staff, the areas in which the agency has agreed to make changes, and the instances in which the staff will recommend that the Committee object to specific rules or take other action. The Committee members review this report, while the agencies provide written responses to the recommendations included in the report.

The agencies' written responses are incorporated in the final report along with any changes suggested by the Committee members. This final report provides the basis for the formal hearing at which the Committee takes action on the recommendations.

The criteria which are the basis for the Joint Committee's review of rules under this program are listed in Section 250.14 of the Committee's Operational Rules (see Appendix

C, pages 296-304). These criteria are broader than the criteria used to review proposed rulemaking and allow a more substantive and programmatic review of the rules. The criteria guide both the staff-level review process and the decisions of the Committee itself.

The Committee initiates several reviews on different subject areas at the same time. The workload and schedule involved necessitates overlapping the various areas as illustrated in Table Fourteen. Although the simplified scheme in the table does not show it, as many as six subject areas may be undergoing review in different stages by the Joint Committee at any given time.

#### Regulation of Occupations

Initial work on the 28 sets of rules classified in the "regulation of occupations" category began late in 1979, when each of the affected agencies was contacted and asked to answer seven initial questions about each set of rules under review. Four subcommittees were appointed for the purpose of conducting public hearings to gather public comments about the rules. Letters were sent to over 600 individuals, associations and interest groups, informing them of the hearings, and inviting them to testify or to send their comments to the Committee. In addition, a number of announcements were printed in newspapers across the state. Hearings were held in Springfield, Chicago and Joliet. A list of the subcommittees and the rules which were the subject of each subcommittee hearing appears in Table Fifteen.

Following development of questions, agency responses and conferences with the agencies, a preliminary report was completed, which set forth, in draft form, a background and commentary on each set of rules, recommendations for specific Committee action, and issues raised and agreements reached between Joint Committee and agency staffs. The preliminary report was distributed in August, 1980 to the affected agencies. Each agency was asked to review the report and submit its written comments to the recommendations contained in the report. The agencies were also asked to review and confirm the staff-level agreements.

The written responses of the agencies to the recommendations, along with additional recommendations resulting from agreements which were not confirmed, were incorporated into the final report on these rules dealing with regulation of occupations. The 500-page report was considered by the Committee at the November 18, 1980, meeting.

TABLE FOURTEEN  
SIMPLIFIED SCHEME FOR FIVE-YEAR REVIEW PROGRAM SCHEDULE

	<u>1980</u>	<u>1981</u>
<u>First Year</u>		
Regulation of Occupations (Round One)	Background Materials Report	Preliminary Report Final Report Supplemental Report
Consumer Protection and Labor Laws (Round Two)	Background Materials Report	Preliminary Report Final Report Supplemental Report
Business Regulation (Round Three)		Background Materials Report Preliminary Report Final Report Supplemental Report
<u>Second Year*</u>		
Public Utilities		Background Materials Report Preliminary Report Final Report
Wildlife Management		Background Materials Report Preliminary Report

\*Other subject areas scheduled for review during the second year will be scheduled in a similar manner. This table is intended only to indicate the general overlapping nature of the scheduling of the subject areas in the five-year review program.

TABLE FIFTEEN  
SUBCOMMITTEES FOR PUBLIC HEARINGS ON RULES CLASSIFIED UNDER REGULATION OF OCCUPATIONS

	Subcommittee One	Subcommittee Two	Subcommittee Three	Subcommittee Four
<b>Chairmen:</b>	Sen. George Sangmeister	Sen. David J. Regner	Rep. A.T. "Tom" McMaster	Rep. Douglas N. Kane
<b>Members:</b>	Sen. Jeremiah E. Joyce	Sen. Arthur L. Berman	Rep. Richard Kelly, Jr.	Sen. Prescott E. Bloom
	Sen. Frank D. Savickas	Rep. Glen L. Bower	Sen. Lynn Martin	Rep. Alan J. Greiman
	Rep. Robert C. Winchester	Rep. Harry "Bus" Yourell	Sen. Richard A. Walsh	Rep. Jim Reilly
<b>Rules:</b>	<u>Department of Registration and Education</u>	<u>Department of Public Health</u>	<u>Department of Registration</u>	<u>Department of Revenue and Education</u>
	- Rules in Relation to Meetings	- Plumbing License Law rules	- Architectural Act rules	- Retailers Occupation Tax Act and Municipal Retailers Occupation Tax Act Rules
	- Rules of Practice in Administrative Hearings (Civil Administrative Code)	<u>Department of Registration and Education</u>	- Structural Engineering Act rules	- Rules under Services Occupation Tax Act and Municipal Services Occupation Tax Act
	- Detective Act rules	- Medical Practice Act rules	- Professional Engineering Act rules	- Rules under Municipal Use Tax Act
	- Detection of Deception Examiners Act rules	- Rules concerning Dental Practice, Dental Hygienists and Dental Specialists	- Land Sales Act rules	- Rules under Municipal Leasing Occupation Tax Act
	- Certified Shorthand Reporters Act rules	- Rules under the Veterinary Practice Act	- Real Estate Salesmen and Brokers rules	- Bingo License Tax Act rules
	- Horseshoeing Act rules	- Funeral Directing and Embalming Act rules	- Land Surveyors and Act rules	
	- Weather Modification Control Act rules	- Barber Act rules	- Public Accounting Act rules	
		- Beauty Culture Act rules		<u>Secretary of State</u>
				- Securities Act of 1953

As a result of that report, the Committee issued fifteen formal objections to specific rules, made five requests to agencies for specific action, and recommended six bills to remedy problems discovered in the review. The Committee also confirmed agreements for nearly 350 substantive changes to the 28 sets of rules.

Following is a summary of the specific actions taken by the Joint Committee resulting from evaluation of those rules classified under the subject area of regulation of occupations.

### 1. Department of Public Health

The Committee objected to the administrative search provisions of the Plumbing Code. The United States Supreme Court requires a warrant or certain other precautionary regulations before a search of business or private property will be legal under the Fourth Amendment. The objection of the Committee focused on the failure of the rule to include safeguards required by the Court. The full text of the specific objection appears on pages 46 - 47.

The Committee deferred action on a recommendation that it object to the Department's failure to file certain industry standards with the Secretary of State. The standards are incorporated by reference into the Plumbing Code. Section 6.01 of the Illinois Administrative Procedure Act requires that any trade standards that are incorporated into the rules be filed with the Secretary of State. The Committee decided to develop possible alternatives to, or clarifications of, the filing requirements. Bill One (pages 140-142) is partly in response to this situation.

### 2. Department of Revenue

The Committee voted to draft and introduce legislation which would require that the binding opinions issued to taxpayers by the Department of Revenue, and other declaratory rulings issued under authority of the Illinois Administrative Procedure Act, be published and made available to the public (see Bill Eight, pages 164-165). Binding opinions are now issued by the Department to individual taxpayers, and prior opinions are given precedential value by the Department. However, under current practice such opinions are not available to anyone outside the Department. The requirement of publication will be similar to that already required for opinions issued concerning the machinery tax exemption.

### 3. Department of Registration and Education

#### a. Exams, Fees and Enforcement

After reviewing the figures supplied by the Department showing the pass/fail rate of many of the licensing examinations, the Joint Committee asked the Department to study those examinations that had particularly high or low pass rates. The Committee feels that the Department needs to determine if the exams are really accurately measuring the qualifications of the applicants. The full text of the recommendation adopted by the Committee is as follows:

At its meeting on November 18, 1980, the Joint Committee on Administrative Rules requested the Department of Registration and Education to conduct a study of those licensing examinations conducted by the Department which have, in the past three years, had an average passing rate of less than 50% or more than 95% to determine whether such licensing examinations are assuring that examinees are adequately knowledgeable and competent to practice to profession, and are not excluding those persons who are adequately knowledgeable and competent.

The reason for the recommendation is that each licensing act has, as its purpose, the safeguarding of the public health, safety and welfare by insuring that those holding themselves out as able to perform certain services meet at least minimum levels of professional education and competence. The examinations administered by or under the authority of the state are designed to judge whether or not the examinee is sufficiently knowledgeable to be licensed to practice the profession to which he seeks admission.

An examination may well be so difficult as to result in many otherwise well-qualified applicants being deemed a license, or it may be so easy that even those who are not sufficiently knowledgeable or competent may be licensed.

A consistently high or consistently low pass rate in a particular field suggests the possibility of a deficiency in the make-up or administration of the examination, or undue restrictions on entry to a profession.

The Committee also asked the Department to study the existing fees for licensing and examinations, after examining the various costs of regulation to the licensees and to the state. The Committee noted the discrepancies in fees and costs and the fact that some of the fees have not been changed for a number of years. The full text of the recommendation adopted by the Committee is as follows:

At its meeting on November 18, 1980, the Joint Committee on Administrative Rules recommended that the Department of Registration and Education conduct a study of all licensing fees under its jurisdiction and consider the amount of fees in relation to economic impact on those regulated and on the state.

The reason for the recommendation is that many of the fees have not been changed for many years, and there appears to be a wide disparity between the cost to the state for regulation of various occupations and the income from the fees imposed. There is also a sizeable discrepancy between various occupations as to the initial cost of examination and licensure. It appears appropriate at this time to consider the amount of fees in relation to the net revenue or net cost to the state resulting from regulations, and in relation to the economic impact on those regulated.

The Joint Committee also asked the Legislative Audit Commission to direct the Auditor General to conduct a program audit of the investigation and enforcement programs of the Department of Registration and Education. Written and oral comment received by the Committee at public hearings, as well as statistical information gathered during review of the rules, support an earlier audit indicating some deficiencies in the enforcement program. The Committee felt that an ineffective investigation and enforcement program results in failure to achieve the purpose and intent of the statutes, and that if the rules that are on file are not being adequately enforced, they do not accurately reflect the Department's actual policies. This audit has been initiated.

#### b. Specific Occupations

The Committee's review of the Accounting Rules revealed that the University of Illinois had no rules on file governing the Certified Public Accountants examination. The statute regulating accountants requires the University to establish rules, and the Administrative Procedure Act requires that those rules be filed with the Secretary of State. After the Committee contacted the University about the lack of rules, appropriate rulemaking was initiated.

The Committee's investigation also discovered that the Rules of Professional Conduct for accountants, which are currently on file, have never been utilized or enforced. The Committee considered an objection to those rules, as they did not reflect the actual policy of the Department; however, the Department of

Registration and Education agreed to begin enforcing the rules, and the Committee, therefore, did not object to the rules. The Department also agreed to file certain professional accounting guidelines with the Secretary of State. The guidelines are now referred to in the Rules of Professional Conduct, but are not set forth in the rules.

The Committee voted to suggested legislation to the appropriate standing committees to eliminate the Beauty Culture Advisory Board, and to combine the functions of that Board with those of the Beauty Culture Committee. The law now creates two separate boards (see Bill Seventeen, pages 241-244).

The Committee asked the Department of Registration and Education to consider promulgating rules to detail the duties dental hygienists may perform. The present rules set forth the requirements for obtaining a license, but do not say what the license authorizes a dental hygienist to do. Comments received by the Committee at public hearings indicated confusion as to what functions dental hygienists are allowed to perform under the current law. The text of the recommendation as adopted by the Committee is as follows:

Section 4(c) of the Illinois Dental Practice Act outlines the functions which dental hygienists registered in Illinois may perform, and the conditions under which these functions may be performed. Paragraph (4) of this Section states that dental hygienists may perform such "other procedures and acts as shall be prescribed by rule or regulation of the Department of Registration and Education."

The Joint Committee has received both written and verbal comment from the Illinois Dental Hygienists' Association indicating that additional rulemaking by the Department defining the procedures and acts which dental hygienists may perform would be desirable. The Association feels that the Department's lack of rules interpreting and defining the supervisory role of dentists over dental hygienists has resulted in "considerable confusion regarding the delivery of dental hygiene services in Illinois."

The Department's rules currently apply to dental hygienists only in the matter of licensing and examinations for licensure. They do not address the issues of what functions may be performed by dental hygienists or of what nature the supervisory role of dentists over dental hygienists should be. Rulemaking in this regard, which is authorized by section 4(c) of the

Act, would appear to make these rules and regulations more responsive to the needs of the people they affect, as represented by the Association.

Section 7.05(4) of the Illinois Administrative Procedure Act states that the "Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient." It is therefore the recommendation of the Joint Committee that the Department consider the advisability of promulgating rules defining and specifying the procedures and acts which dental hygienists registered in Illinois may perform.

In reviewing the dental practice rules, the Committee also considered objecting to a rule requiring endorsements as to moral character and photographic identification to be from licensed dentists, because the requirements of the rule go beyond those required by the statute. The agency agreed, however, to change the rule and the Committee deferred action on the objection.

The Committee considered a recommendation to draft legislation to remove regulation of horseshoers from the jurisdiction of the Department of Registration and Education and place it with the Illinois Racing Board. The Committee decided that placing regulatory responsibility under the Department of Agriculture would be more appropriate than placing it under the Racing Board. The Committee, however, deferred action on the recommendation, noting that the "Sunset Committee" (officially the Select Joint Committee on Regulatory Agency Reform) was also studying the regulation of horseshoers.

The Committee voted to object to the Lands Sales Act rules because of failure of the Department to define the term "unrestricted warranties." The Committee felt that the term used is so vague that those who must follow the rule cannot tell what warranties must be included in the "unrestricted warranties." The full text of the specific objection appears on page 53.

As a result of its review of the rules to regulate land surveyors, the Committee is suggesting legislation to clarify the purpose of the title "registered land surveyor-in-training." The law now provides that the state may register a person as a registered land surveyor-in-training and collect a fee, but fails

to indicate the purpose or necessity of becoming the land surveyor-in-training. The Committee's suggested bill will clarify the purpose of this registration (see Recommended Bill Fifteen, pages 234-236).

A major portion of the Committee's time was devoted to reviewing the Department's rules under the Medical Practice Act. The Committee voted to object to a Medical Practice Act rule which requires separate authorization for the practice of acupuncture. The Medical Practice Act contains no specific statutory authority for requiring a special authorization, and in fact prohibits discrimination against any method of treatment. The full text of the specific objection appears on page 51.

The Committee also objected to a Medical Practice Act rule providing for accreditation of medical colleges, because the Department has not set out adequate standards and criteria for determining which schools it will accredit. Such standards are required by Section 4.02 of the Illinois Administrative Procedure Act. The full text of the specific objection appears on pages 49 - 50.

The Committee voted to object to two additional provisions of the Medical Practice Act rules providing for approval of organizations and foundations offering programs acceptable for continuing medical education credits. Here again, the Department has failed to set forth adequate standards and criteria by which to judge which organizations and foundations will be approved, and which will not be approved. The full text of the specific objections appears on pages 52 - 53.

A rule of the Department adopted to regulate real estate brokers and salesmen setting forth requirements on reciprocity was found by the Committee to be objectionable, because the requirements set out in the rule are not as stringent as those required by the law. The full text of the specific objection appears on pages 54 - 55.

The Department also failed to set out adequate guidelines for determining when a real estate broker's or salesman's license will be suspended or revoked. The Committee objected to the rule because it does not have the standards required by Section 4.02 of the Administrative Procedure Act, and because the rule does not accurately reflect current agency policy. The full text of the specific objection appears on pages 53 - 54.

Noting the apparent overlap of functions between the Department of Registration and Education and the Administrative Office of Illinois Courts in the regulation of shorthand reporters, the Committee raised the question of whether the responsibility for regulating shorthand reporters should be combined into just one of the agencies, rather than continuing to have two separate state agencies regulate the profession. This issue will be referred to the House and Senate Judiciary Committees and other appropriate standing committees for further study.

A requirement that the Department establish minimum educational requirements for admission to veterinary schools and other professional schools may be eliminated under a bill that the Committee is suggesting for consideration by the standing committees of the General Assembly (see Bill Thirteen, pages 216-229). The general authority of the Department to set standards for entry into professional schools was eliminated by legislation passed in the last session of the General Assembly. The Committee feels, however, that until the law is changed the Department should establish the standards required by law.

Another rule regulating veterinarians which makes it more difficult for a citizen of a foreign country to obtain a veterinary license was objected to by the Committee because the Department has no authority to make a distinction based on citizenship or nationality. The full text of the specific objection appears on pages 57 - 58.

A Veterinary rule which requires Department approval of pre-veterinary schools was also found to be objectionable. The Committee believes that the Department lacks the authority to require such approval. The rule also does not accurately state the Department's current policy. The full text of the specific objection appears on page 55.

The Committee also voted to object to a veterinary rule providing for an oral interview prior to an out-of-state veterinarian being licensed in Illinois. The Committee's concern with the rule focused on the fact that, without further clarification in the rule about the purpose and scope of the interview, the oral interview process may be abused. The full text of the specific objection appears on page 57.

The Committee also voted to object to rules requiring applicants for licenses as a physician or a veterinarian to obtain recommendations from two members of his

own profession before he can be licensed. The authorizing statutes require only that applicants show they are of good moral character. The Committee believes that under the current law, a physician or veterinarian is considered no more qualified to judge the moral character of an applicant than anyone else. The full text of the specific objection appears on page 56. The committee decided, however, to suggest legislation which would allow such a requirement (see Recommended Bill Sixteen, pages 237-240).

A rule which allows the Weather Modification Control Board to judge each application for a permit on a case-by-case basis was objected to by the committee. The rule states only that the Board will judge the applications and the applicants and fails to set out guidelines or criteria by which it will make its decisions. The Joint Committee objected to the rule because it does not include the standards and criteria required by Section 4.02 of the Administrative Procedure Act. The full text of the specific objection appears on pages 58 - 59.

The Committee also voted to object to another Weather Modification rule which allows the Board to limit or place conditions on permits. In this rule also, the Department fails to set forth adequate standards and criteria by which to determine what conditions or limits it will place on a permit. The full text of the specific objection appears on page 59.

The Committee, noting an apparent discrepancy in the Civil Administrative Code, is suggesting legislation to clarify that department-wide rules, such as rules governing the conduct of meetings and hearings under the Open Meetings Act, do not have to be approved by all of the individual examining committees within the Department (see Bill Fourteen, pages 230-233).

#### Subject Areas Under Review

Two groups of rules are currently being reviewed as part of the first year of the five-year review.

The first group includes rules classified under the subjects of consumer protection and labor laws. In the early part of 1980, those agencies with rules in the consumer protection and labor laws areas were notified of the impending review, and asked to respond to the seven initial questions. Upon receipt of those responses, the rules and

statutes were reviewed, and specific questions were developed to explore possible deficiencies in the rules.

While there are only 13 sets of rules classified in these two areas, the substance of the rules results in the size of the task of review being nearly equal to that faced in the review of the 28 sets of rules classified under regulation of occupations. A 768-page background materials volume, containing summaries of the rules and public comments, as well as the text of the actual rules and the statutes upon which they are based, was prepared and presented to the Committee in July 1980.

The Joint Committee conducted a public hearing in Chicago on August 22, 1980, to gather input from the public concerning the rules. In a crowded hearing room, nine persons, representing several large state-wide interest groups and associations, offered their comments and reports of their experiences with the Department of Labor's rules and policies under the Unemployment Insurance Act. In addition, numerous written comments from businesses, labor groups, and associations throughout the state have been received by the Committee.

On the basis of information gathered at the public hearing, inquiries were made by the Committee concerning the rules and policies of the Department of Labor, Bureau of Employment Security. On the basis of those inquiries, it has been discovered that, in addition to the 175 pages of rules currently on file with the Secretary of State, the Department maintains nine looseleaf volumes of "Precedent Manuals" and over 40 looseleaf volumes of "Policy Bulletins." An examination of these documents indicates that both contain a large amount of information which probably constitutes "rules" as defined in the Administrative Procedure Act. Thus, in addition to the regular review of the filed rules, the Committee began the lengthy process of examining, analyzing and organizing these additional 49 volumes of policy statements issued by the Department, to determine which parts should be filed as rules.

The Committee's staff has met with representatives of each agency whose rules are classified in the consumer protection and labor laws categories. Numerous tentative agreements for changes to existing rules have been reached, and several recommendations are being prepared for consideration by the Committee. The preliminary report on these thirteen sets of rules is in the process of being compiled. It is anticipated that the preliminary report will be distributed to the Committee and the affected agencies as soon

as the analysis of the unemployment insurance manuals and bulletins is complete, early in 1981.

The other first-year subject area currently being reviewed is business regulation. This subject area is by far the largest category in the five-year review schedule. One hundred and thirty-nine sets of rules are classified under the business regulation category, including the multi-volume rules under the Insurance Code, rules under ten revenue acts, 64 rules of the Illinois Racing Board, and 21 sets of rules administered by the Department of Agriculture.

Initial questions concerning the rules in the business regulation category were mailed to the agencies in early 1980. Each agency was asked to respond within 60 to 90 days. Following receipt of those responses, extensive research and analysis was begun on each set of rules by the Joint Committee. Memoranda were mailed to interest groups and associations informing them of the review and seeking their comments.

Throughout the fall and through the end of 1980, specific questions were addressed to the agencies about the rules and programs the rules implement. At year's end, over 80% of the initial reviews were completed, and several agency responses had been received.

The background materials report for the business regulation category comprises four volumes. Subcommittees are being formed, and dates for public hearings are being set on the rules in each of these volumes. It is anticipated that four public hearings will be held in the first several months of 1981, and that the preliminary report on business regulation will be completed prior to mid-year.

The other subject areas which will be reviewed in 1981 are listed in Table Sixteen. These are the areas scheduled for review during the second year of the review schedule.

#### Revisions in the Program

A major effort was made by the Joint Committee during 1980, to revise the five-year review program to meet the suggestions and criticisms of various state agencies and to make the program more manageable. These changes have included a refinement of the subject area categories and a complete revision of the classification of the existing rules into the subject areas. The effort has also included revising the Committee's operational

TABLE SIXTEEN  
SUBJECT AREAS SCHEDULED FOR REVIEW DURING THE SECOND YEAR  
OF THE FIVE-YEAR REVIEW PROGRAM

Education and Cultural Resources

    Special Education

    Vocational and Professional Education

Financial Institutions

Government Management

    State Buildings Construction and Maintenance

    Public Health

    State Adult Institutions

Natural Resources

    Land Pollution Control

    Wildlife Management

Public Utilities

Subject areas scheduled for other years are listed in Sections 250.4 through 250.8 in the Joint Committee's Operational Rules in Appendix C (see pages 296-304).

rules for the program to make them easier to understand and to implement the changes in the subject area categories.

The task of classifying all of the 40,000 pages of existing rules into subject areas is a particularly difficult and complex job, but it was necessary to lay the groundwork for the five-year review program. The original classification which was developed in 1979 utilized a matrix which not only classified rules into subject areas, but also classified rules into different functional activity categories. The resulting classification was used to determine which rules would be reviewed during the first year, but it became obvious that the matrix system was too theoretical to provide a useful classification of the rules for review. It was unwieldy to manage and numerous agencies claimed that it was virtually incomprehensible.

To revise the classification system, the Committee eliminated the functional activities categories and expanded the number of subject area categories. The new subject areas were intended to be common-sense groupings of rules which were actually related to each other in their effects. They also divided the rules into smaller groups with fewer sets of rules in each, so that the Committee would not have to deal with areas as large as business regulation again.

The Committee also revised the review schedule, attempting to spread each agency's rules out over the five years. These changes were discussed with each of the major agencies who might have experienced difficulties in complying with the information requests and responses that would have been required if all of the agency's rules were scheduled at the same time. The smaller subject areas allowed the flexibility necessary to develop this type of schedule.

The revised classification and schedule was distributed to agencies in September 1980. The revised and simplified operational rules for the program were adopted by the Committee in November 1980, in conjunction with the simplification and codification of all of the Committee's operational rules.

The five-year review program has already shown some important results. It is anticipated that the changes in the program during 1980, will make it even more effective in providing necessary legislative oversight of the entire body of agency rules and regulations.

## COMPLAINT REVIEW PROGRAM

The Joint Committee's authority to review rules based on complaints is drawn from the broad language of Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act. Section 7.04 provides:

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.
3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigation of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

Section 7.07 of the Act deals with the issuing of objections to existing rules, and provides that the Committee "may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

Drawing from these sections of the Act, the Committee adopted Operational Rule Six: Complaint Reviews of Existing Rules, in August 1979. The rule was rewritten and put into the codification format during 1980 (see Appendix C, pages 305-309).

Many of the communications received by the Joint Committee require only the supplying of some basic information, or copies of rules, or referral to the appropriate agency for information. In addition, the Committee occasionally receives requests for opinions as to whether the Administrative Procedure Act applies to a particular agency. These types of inquiries do not generally require the expenditure of time required with other substantive complaint matters, but the Committee staff provides whatever information is necessary. The formal complaint review process was established to handle the more difficult situations in which a serious legal or substantive issue is raised by the public about an agency's rules.

Although the number of complaints considered by the Committee is not great, the availability of this process allows the Committee to focus on specific issues of public concern. The numerous information requests also provide a gauge for monitoring public

concerns about agency rules. The criteria listed in Section 260.7 of the Operational Rules indicate the scope of the issues considered by the Committee in complaints.

During 1980, eleven new complaints were received by the Joint Committee which required investigation. Three of these complaints were resolved by agreements by the agencies to amend their rules to remedy the complaint. Four complaints were determined to be outside the Committee's scope of review; differences of opinion between the complainant and the agencies were matters within the discretion of the agency rather than the narrower issues considered by the Joint Committee. In two other instances, the rules which were the subject of the complaints are currently under review in the five-year review schedule, so the issues raised by the complaints are being dealt with as part of the five-year review.

Two complaints received during 1980 are not yet resolved. An agreement between the complainant and the agency is expected in one case, and the other is expected to be considered by the Joint Committee in early 1981.

Five complaints received prior to 1980 remain under consideration. Resolution of three of those complaints is awaiting court decisions, a third is under review as part of the five-year review, and the remaining two are under discussion with the agencies involved.

Following is a summary of the complaints which were received in 1980, which remain unresolved at the close of the year.

1. Complainant was concerned with the Department of Corrections' policy regarding the placement and transfer of juvenile offenders. Complainant had been informed that it was the Department's policy to incarcerate juvenile offenders found guilty of felony murder in maximum security facilities unless the local Judge and State's Attorney recommend in writing to the contrary. The Department responded in writing to the contrary. The Department responded that no such policy existed, and cited the relevant rules and regulations regarding placement of juveniles.

2. Complainant argued that a two-page document entitled, "A Briefing for Recipients of Personal Property Replacement Tax Revenues," was Department of Revenue policy which should be incorporated in a rule. After review, it was concluded that the ad valorem personal property tax abolition bill was sufficiently comprehensive to render additional rulemaking unnecessary.
3. The complainant protested the issuance of a "rule" by the FAIR Plan Association which prohibited insurance agents from charging a service fee in connection with the issuing of insurance. Complainants alleged that this "rule" was not promulgated under the Administrative Procedure Act's rulemaking requirements, and that prohibiting services charges is in violation of the law. It was concluded that the prohibition did not actually conflict with the statute, but the Department of Insurance withdrew the service charge prohibition. It was also concluded that the FAIR Plan Association was probably not a state agency for purposes of the Administrative Procedure Act. Complainant agreed, and the matter was closed.
4. An association of educational institutions questioned the Board of Higher Education's authority to regulate off-campus sites established by "grandfathered" private institutions. After extensive research and discussion, the Board and the complainant agreed to work together and develop appropriate remedial legislation.
5. Complainant questioned the lack of rules for the proper administration of the Illinois State Indemnification Act. After extensive discussion with several agencies, the Attorney General agreed to promulgate rules by February 1981.
6. A company questioned whether the "informal" hearings conducted by the Department of Labor Wage Claims Division were subject to the Administrative Procedure Act hearing requirements, and whether any wage claim hearing procedures

should be embodied in rules. After lengthy discussion with the Department of Labor, it was concluded that wage claim hearings were probably not subject to the formal hearing requirements. It was agreed that some rules for wage claim hearings should be promulgated. This matter is currently under review in the five-year review program.

7. This complaint raised the same basic issues as a previous complaint considered by the Joint Committee. It involved the regulation of boilers by the State Fire Marshal. Staff met with representative of the Fire Marshal's office in July 1980, to discuss the problem. It was concluded that while the law does not expressly prohibit the operation of certain boilers (in this case, an antique traction engine locomotive thresher), authority for such prohibition may be inferred. Amendatory legislation may be desirable to remedy this lack of explicit authority.
8. A law firm in Danville, Illinois, representing a number of fireworks companies, contended that the State Fire Marshal's rules for the construction of magazines are beyond their statutory authority, and are in direct conflict with the Department of Mines and Minerals' rules. The rules of the State Fire Marshal and Department of Mines and Minerals both appear to be within their statutory authority in the imposition of construction requirements for magazines; however, considerable overlap does exist. The Joint Committee will address this overlap problem as part of the five-year review program, since the Department of Mines and Minerals' rules are currently under review.
9. Complainant alleged that a recently adopted rule allowing licensed practical nurses to act as instructors in nurse's aide training programs is in violation of the statute. When this issue was brought to its attention, the Department of Public Health agreed to amend the rule by deleting the relevant section.

10. Complainant alleges that an "Interpretive Bulletin" issued by the Department of Administrative Services, clarifying various provisions of the Department's Vehicle Rules, is beyond its statutory authority and that the policy it embodies is not expressed in the published Vehicle Rules. It is expected that the Joint Committee will consider this complaint at a hearing early in 1981.
11. A number of federal polygraph examiners have been denied licensure in Illinois because they have not completed an internship program in the State. Complainant argues that federal requirements are more stringent than in Illinois, so they should be licensed. The matter is currently under discussion with the Department of Registration and Education.

Those complaint files which were received prior to 1980, but which were considered during the year, include:

1. Complainant questions the authority for a number of rules relating to reimbursement costs for nursing homes. The issues raised in this complaint about group care services will be examined as part of the five-year review program. The relevant rules are scheduled for review during the second year of the program.
2. This complaint relates to the Division of Vocational Rehabilitation's State Plan submitted to the federal government for approval as a prerequisite to receiving federal funds for a handicapped citizens program. Complainant alleges mismanagement of funds through expenditures for a bogus program. The matter is still under review, awaiting the results of a federal study.
3. Complainant is questioning the Secretary of State's incorporation procedures, particularly a policy which does not allow the incorporator's current occupational license as proof of good standing in the occupation. The Secretary of State's office is considering changing its policy in this area.

In addition to the complaint files discussed here, two complaints are being held pending the outcome of court decisions. These complaints relate to the State Board of Education and racial quotas and to the Governor's Purchased Care Review Board and school psychologists.

This discussion of the complaints resolved or being considered by the Joint Committee illustrates well the detailed oversight of agency rules conducted by the Committee. As the public becomes more aware of the availability of this procedure, it is likely that the number of complaints received by the Committee will increase significantly.

## PUBLIC ACT REVIEW

The Illinois Administrative Procedure Act provides that the Joint Committee will monitor legislative, judicial or executive actions that may affect rulemaking. Section 7.05 of the Act states:

The Joint Committee shall have the following responsibilities under this Act...3. The Joint Committee shall maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking.

To implement at least part of this responsibility, the Joint Committee has developed a program to review each new public act. The program is intended to monitor legislation and its impact on rules. This program, which was initiated in 1979, is conducted by the Rules Review Section. Approximately 500 public acts were identified as needing rulemaking in 1979. The number of public acts requiring rulemaking is much lower in 1980 because of the limited nature of the legislative session in even-numbered years.

The purposes of the public act review are twofold. One is to keep the Joint Committee and the General Assembly informed of the progress of the agencies in implementing recently enacted bills. This review indicates how well agencies follow through on legislation.

Secondly, the program informs agencies when rulemaking may be required. The program should encourage prompt rulemaking, rather than resort to emergency rules when the effective date of the bill comes all too quickly.

Other states, notably New York, has used a similar legislative review process to monitor the effect legislation has on agency rulemaking. A report by the New York Administrative Regulations Review Commission, entitled The Laws of 1977: An Analysis of Regulatory Implementation, indicates the results of this review process in that state.

The review of public acts was started in October 1980, for the bills enacted during 1980. Approximately 60 public acts were determined to require either new rules or some amendment to an agency's current rules. The agencies were contacted with a list of the public acts and asked to indicate whether they agreed that rulemaking was necessary and what action they were taking to initiate such rulemaking.

Table Fourteen indicates the number of public acts which were reviewed and found by the Joint Committee staff to possibly require rulemaking. The table also indicates the instances in which agencies have initiated rulemaking. Table Fifteen lists the specific public acts and the agency responses to each act.

Although this is only the second year of this program, the Joint Committee's oversight function of reviewing public acts seems to be having a beneficial effect. Agencies seem to be increasingly aware of the need to implement new acts with appropriate rulemaking.

## TABLE SEVENTEEN

NUMBER OF 1980 PUBLIC ACTS WHICH COULD REQUIRE  
RULEMAKING BY AGENCY

	Number of Public Acts Which Could Require <u>Rulemaking</u>	Number of Rulemakings <u>Initiated</u>
<u>Code Departments</u>		
Agriculture	2	0
Children and Family Services	2	1
Conservation	2	0
Corrections	2	0
Financial Institutions	1	0
Human Rights*	1	1
Insurance	5	1
Labor	1	0
Mental Health and Developmental Disabilities	1	0
Personnel	2	0
Public Aid	1	0
Public Health	4	2
Registration and Education	1	0
Revenue	7	1
Transportation	2	0
<u>Elected Officials</u>		
Comptroller	2	1
Secretary of State	4	0
<u>Other Agencies</u>		
Board of Elections	4	0
Commerce Commission	1	0
Community College Board	3	0
Environmental Protection Agency	2	0
Fire Marshal, State	1	1
Housing Development Authority	1	0
Industrial Commission	1	1
Industrial Development Authority	1	0
Institute of Natural Resources	1	0
Local Government and Financial Commission	1	0
Pollution Control Board	4	0
School Finance Authority	1	0
<u>Total</u>	61	9

\* Newly created or reorganized agencies

TABLE EIGHTEEN

SPECIFIC PUBLIC ACTS WHICH COULD REQUIRE RULEMAKING  
AND AGENCY RESPONSES

<u>Public Act</u>	<u>Agency</u>	<u>Response</u>
81-1221	State Board of Education	No Response
81-1223	Department of Revenue	Does not require rules
81-1238	Community College Board	Does not require rules
81-1256	Department of Public Health	Agree and have published rules
81-1267	Department of Human Rights	No response
81-1284	Housing Development Authority	No response
81-1295	Department of Public Aid	No response
81-1329	Community College Board	Does not require rules
81-1348	Secretary of State	No response
81-1359	Local Government and Finance Commission	Do not agree
81-1360	Department of Agriculture	Do not agree
81-1368	Attorney General	No response
81-1369	State Board of Education	No response
81-1370	Pollution Control Board	No response
81-1371	Pollution Control Board	No response
81-1372	Pollution Control Board	No response
81-1373	Department of Personnel	No response
81-1378	Department of Revenue	Agree and will propose rules
81-1379	Department of Revenue	Agree and have initiated rules
81-1381	Department of Registration and Education	Do not agree
81-1382	Department of Insurance	No response
81-1385	Department of Conservation	Agree
81-1386	Department of Conservation	Agree
81-1392	Department of Public Health	Does not require rules
81-1393	Illinois Commerce Commission	No response
81-1398	Department of Mental Health and Developmental Disabilities	Do not agree
81-1399	Community College Board	Do not agree
81-1400	Secretary of State	No response
81-1404	Department of Transportation	No response
81-1405	Department of Revenue	Agree and will propose rules
81-1407	Department of Transportation	No response
81-1415	Department of Public Health	Agree and have initiated rules
81-1423	Department of Revenue	Agree and will propose rules
81-1424	Department of Revenue	Do not agree
81-1426	Department of Insurance	No response
81-1430	Department of Insurance	No response
81-1444	Pollution Control Board	No response
	Environmental Protection Agency	No response
81-1447	State Board of Elections	No response

<u>Public Act</u>	<u>Agency</u>	<u>Response</u>
81-1448	Institute of Natural Resources	Do not agree
81-1450	School Finance Authority	No response
81-1458	Secretary of State	No response
81-1463	State Fire Marshal	Are repealing rules
81-1465	Comptroller	Agree and have proposed rules
81-1471	Department of Revenue	Agree and will propose rules
81-1472	Department of Personnel	No response
	Secretary of State	No response
	Comptroller	Agree and will propose rules
81-1476	Department of Corrections	Current rules are compatible with the public act
81-1477	Department of Labor	No response
81-1479	State Board of Education	No response
81-1480	Department of Children and Family Services	Agree and have initiated rules
81-1482	Department of Insurance	No response
	Industrial Commission	Agree and have proposed rules
81-1483	Industrial Development Authority	No response
81-1484	Environmental Protection Agency	No response
81-1492	Department of Children and Family Services	Do not agree
81-1507	Department of Corrections	Agree and will propose rules

## PROCEDURAL LEGISLATION

One of the functions of the Joint Committee included in Section 7.05(1) of the Administrative Procedure Act is to "conduct a systematic and continuing study of the...rule-making process of all state agencies... for the purpose of improving the rule-making process..." Throughout its three years of operation, the Joint Committee has monitored the rulemaking process of agencies and made recommendations to improve the rulemaking process. Many of the changes in the Administrative Procedure Act recommended by the Joint Committee have been enacted by the General Assembly. Among these changes was the creation of a second notice period solely for legislative review of proposed rules, which was recommended by the Joint Committee in the 1978 Annual Report and enacted in 1979.

This section of this Annual Report will discuss the results of the procedural legislation recommended by the Committee in its 1979 Annual Report and will outline the procedural changes being recommended by the Committee in this report. Since a number of the changes being recommended in this report are based on the work of the National Conference of Commissioners on Uniform State Laws in revising its Model State Administrative Procedure Act, some background information on that project is also included.

### Procedural Changes Enacted in 1980

The most important change in the rulemaking process enacted in 1980 was Public Act 81-1514 (House Bill 2351). This major amendment to the Administrative Procedure Act will strengthen the authority of the General Assembly over improper agency rules and regulations. The Act which took effect January 1, 1981, is included in this report as Appendix B(2) on pages 270-275. It was enacted over the Governor's veto during the fall of 1980. The basic provisions of this bill were recommended in the Joint Committee's 1979 Annual Report and originally introduced in the General Assembly as House Bill 1503 in 1979.

A brief summary of the major provisions of this Act may be useful at this point. The Act has been referred to as establishing a "legislative veto," but this term is somewhat misleading. Actually, the Act only allows the Joint Committee to delay the

adoption of proposed rules or suspend the effectiveness of emergency or peremptory rules for a set period of time and based on specific findings. The General Assembly may make the Joint Committee's action permanent by passage of a joint resolution affirming the Committee's action. Without affirmative action by the full General Assembly, the delay or suspension of the rules by the Joint Committee will only be effective for 180 days.

In order to impose the delay or suspension, the Joint Committee must make two findings: (1) that the rules are "objectionable under any of the standards for the Joint Committee's review specified in" other sections of the Administrative Procedure Act, and (2) that the rules "constitute a serious threat to the public interest, safety or welfare." The second required finding should insure that the Joint Committee will not impose a delay or suspension without a serious reason relating directly to the effect of the rules on the public. The Act also provides that this action may be taken by the Committee "only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee," which should further guard against potential abuse of this power by the Committee.

In implementing these new powers, the Joint Committee has proposed rules to provide additional standards to guide its actions, as well as procedures for the delay or suspension of rules. These proposed revisions in the Committee's Operational Rules were published in the Illinois Register on January 9, 1981, and should be adopted prior to June 1, 1981. They will help insure the effective implementation of these additional powers by the Committee.

In his veto of House Bill 2351, the Governor raised a number of constitutional issues about the power of the legislature to control agency rulemaking. He claimed that the bill "constitutes a serious and unwarranted intrusion by the General Assembly and one of its committees into areas properly reserved to the executive and judicial branches of government." He also stated that the bill "would violate the separation and delegation of powers provisions of the Illinois Constitution, and would seriously jeopardize the fair and orderly processes of government in Illinois." Although the General Assembly apparently disagreed with these arguments, it is expected that these provisions of the Act may be the subject of a court challenge on these constitutional grounds.

Although it is impossible to discuss these constitutional issues in depth in this report, the basic flaw in the arguments against these provisions is that they fail to

recognize the basic nature of rulemaking; it is a quasi-legislative power delegated to executive agencies by the legislature to "fill in the details" of statutes. In fact, the legislature is limited in several ways in the extent to which such authority can be delegated. For example, the legislature must provide standards to guide the agency in the adoption of rules. From this perspective on the legal nature of rulemaking, legislative involvement in the process is entirely proper. In a sense, the legislature is merely conditioning its delegation of rulemaking authority by providing for this legislative review process.

The legal arguments about the constitutionality of these provisions is likely to continue for some time, but the General Assembly apparently feels strongly that this strengthened role for the Joint Committee in the rulemaking process is proper.

Public Act 81-1514 also included a relatively minor exemption from the coverage of the Administrative Procedure Act for certain documents maintained by the Department of Personnel. The carefully worded language of the exemption provides that "class specifications for positions and individual position descriptions" do not need to be adopted following the Act's rulemaking procedures. The sheer number and bulk of these documents and the fact that changes in these documents are approved by the Civil Service Commission were cited as reasons for including this exemption. The Act also provided that these documents "shall be made reasonably available to the public for inspection and copying," to safeguard public access to this information.

The other major change in the Administrative Procedure Act enacted during 1980 concerns the codification, computerization and publication of the rules of state agencies. These changes in the Act were made by Public Act 81-1348 (Senate Bill 1822) which became effective October 1, 1980. It appears as Appendix B(1) in this report (pages 262-269).

The major provisions included in this amendatory Act provide authority for the State Library to make numbering and other editorial changes in agency rules, authority for the Legislative Information System to computerize the text of the rules as they are codified, and authority for the Secretary of State to publish all the rules of all state agencies in an Illinois Administrative Code. Additional discussion of these changes in relation to the other efforts to codify agency rules is presented in the next section of this report (see pages 116-123).

Table Fifteen summarizes all of the Public Acts which have amended the Administrative Procedure Act, since its original enactment in 1975. The notes at the end of each section in the copy of the Act in Appendix A (pages 246-261) indicate which public acts have amended each section.

#### Model State Administrative Procedure Act

The original Model State Administrative Procedure Act was adopted by the Commissioners on Uniform State Laws in 1946, the same year that the federal Administrative Procedure Act was enacted by Congress. Much of the impetus behind the development of these acts was the growing size and importance of administrative agencies on both the state and federal levels during the 1930's and 1940's. The model state act was very influential in stimulating the enactment of legislation in numerous states to require specific rulemaking and adjudicatory procedures by state agencies. In Illinois, a 1951 Act concerning administrative rules required only that rules adopted by state agencies be filed with the Secretary of State.

In 1961, the Commissioners on Uniform State Laws adopted the Revised Model State Administrative Procedure Act which was also influential in encouraging and shaping state legislative action in this area. Currently, about thirty states have enacted administrative procedure acts based on either the original model act or the revised version of the model act. A number of other states have adopted parallel acts which are significantly different than the approach taken by the model acts.

The developments in administrative law and the continuing increase in the size and importance of state administrative agencies have apparently convinced the Commissioners on Uniform State Laws of the need for a new revision of the model act. A drafting committee has been developing a draft revision of the model act during the past several years. Professor Arthur Earl Bonfield of the University of Iowa, College of Law, who was instrumental in drafting the Iowa Administrative Procedure Act, has been primarily responsible for drafting the rulemaking portions of the draft model act. Howard J. Swibel, who serves on the Illinois Governor's Administrative Rules Commission, which advises state agencies on compliance with the Illinois Administrative Procedure Act, is also a member of the drafting committee.

A complete, but tentative, draft was presented by the drafting committee to the full National Conference of Commissioners at its annual meeting in Hawaii on July 26 - August 1, 1980. Some changes in the draft will be made as a result of the discussions at

TABLE NINETEEN

PUBLIC ACTS AMENDING THE  
ILLINOIS ADMINISTRATIVE PROCEDURE ACT

	<u>Public Act Number</u>	<u>Effective Date</u>	<u>Bill Number</u>	<u>Main Provisions</u>
79th General Assembly (1975 - 1976)	79-1083	September 22, 1975	HB981	initial enactment
80th General Assembly (1977 - 1978)	80-1035	September 27, 1977	HB14	Illinois Register; creation of Joint Committee; major revision
	80-1457	January 1, 1979	HB15	minor changes in agency definition; codification system; Joint Committee quorum
81st General Assembly (1979 - 1980)	81-1044	October 1, 1979	HB2226	second notice period for Joint Committee; peremptory rulemaking; reorganization of rulemaking provisions; economic effects
	81-1035	January 1, 1980	HB1196	economic effects of rulemaking
	81-1129	January 1, 1980	SB419	standards for exercising discretion
	81-1348	October 1, 1980	SB1822	codification; editorial changes in rules; publication of administrative code
	81-1514	January 1, 1981	HB2351	legislative delay and suspension powers; exemption for Department of Personnel

the annual meeting, but it is likely that the portions of the draft concerning rulemaking will not be changed substantially and will be adopted by the Commissioners at the 1981 annual meeting.

The prefatory note to the draft presented at the annual meeting explains the reasons for development of this new model act:

State administrative law has grown enormously in size and complexity since 1961. In the last twenty years, there has also been a great deal of experience with the provisions of the model act as enacted in the several states, and also a great deal of state legislative experimentation with additional or different administrative procedure requirements. Scholars in the field have also been especially active during the last twenty years, proposing new solutions to old problems as well as new evaluations of old solutions.

There is certainly ample indication that state legislatures will be very receptive to new ideas on administrative procedure legislation. The volume of such legislation considered by state legislatures annually has dramatically increased in recent years, as has the amount of legislative time spent considering state administrative procedure reform generally.

The Joint Committee has included a number of the provisions suggested in the latest draft of the new model act in its recommended procedural changes in the Illinois Administrative Procedure Act. These recommended changes include provisions requiring public hearings on certain proposed rules, and requiring agencies to maintain a rulemaking record or document on each proposed rule.

#### Recommended Procedural Changes

The procedural changes amending the Administrative Procedure Act which the Joint Committee is recommending are discussed in the legislative recommendations section of this report (see pages 126-131). Six specific procedural bills are being recommended by the Committee.

Bill One clarifies the provisions of the Act concerning adoption by reference of federal rules and trade standards. This is a provision which has caused some confusion during the past year and needs clarification. Bill Two would require agency rules to be written in clear and easily understandable language. The third recommended procedural bill would impose a final deadline for the adoption of proposed rules. Bill Four would require agencies to hold public hearings on proposed

rules when requested to do so by certain officials or groups. Each of these four recommended bills is intended to address a specific improvement in the rulemaking process. The Joint Committee believes these specific bills will improve the public accessibility and openness of the rulemaking process.

The other two recommended procedural bills address other improvements in the rulemaking process, but involve unique problems and are not directly related to the revised model act. Bill Five would remedy two minor problems experienced by the Joint Committee in making information about its reviews available to the public. Bill Six would clarify the provision in the Act concerning "declaratory rulings," and would require them to be made publically available. This bill was developed as a result of a specific problem uncovered in relation to the Department of Revenue in the five-year review program.

These procedural recommendations should result in positive improvements in the rulemaking process required under the Administrative Procedure Act.

## CODIFICATION PROGRESS

During 1980, the Joint Committee on Administrative Rules effectively stimulated significant progress in the codification and publication of state agency rules and regulations in Illinois. In cooperation with various divisions in the Secretary of State's office and with the Legislative Information System, the Joint Committee developed a major codification amendment to the Administrative Procedure Act which was enacted by the General Assembly. Under his authority prior to the amendment and the authority provided by this amendment, the Secretary of State developed and adopted a codification scheme as rules, procedural rules and a schedule for implementation of the codification system.

### Development of the Codification System

A 1978 amendment to the Administrative Procedure Act (Public Act 80-1457) provided initial authority for the Secretary of State to develop a uniform codification system. This amendment included three basic provisions: (1) the Secretary of State was required to "prescribe a uniform system for codification of rules on or before July 1, 1980," (2) the Joint Committee was required to review and approve the codification system "conditioned solely upon establishing that the proposed codification system is compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly," and (3) all state agency rules were required to be in compliance with the codification system by July 1, 1984.

To develop the codification system, the Secretary of State in the fall of 1979 appointed an ad hoc task force from various divisions of his office — Rules Division, Data Processing Department, State Library. The task force also included staff members from the Joint Committee and the Legislative Information System. In fact, the creation of the interagency task force was initially suggested by the Joint Committee.

The primary work of the task force focused on the actual detailed specification of a codification scheme which could organize intelligibly all the diverse administrative rules of all Illinois State agencies. In February or March 1980, this major task of the group was completed and a detailed scheme was recommended to the Secretary of State. This scheme was formally proposed as a rule and adopted prior to the July 1, 1980, deadline. The input on the task force from the Joint Committee and the Legislative Information

System insured the compatability of the scheme with the General Assembly's data processing system and the Committee's approval of the scheme.

The scheme adopted by the Secretary of State for codifying all state agency rules utilizes broad subject areas as the basic unit of organization, while also attempting to maintain each agency's rules in a single location whenever possible. These broad subject areas, which have been designated as "titles," are listed in Table Sixteen.

Some background on the development of the outline, the alternatives the task force considered, and the terminology used to refer to the various levels of organization may be useful, since this scheme will provide the basic means for organizing, identifying and locating agency rules in the future. The task force initially identified three basic principles which were regarded as essential to any effective codification system: (1) ease of use, (2) logic and consistency, and (3) ease of agency compliance. The third principle was most difficult to follow in the scheme's development. Most agencies will be able to simply superimpose the scheme on their existing rules, but in some cases more extensive reorganization, reformatting and revision will be necessary.

Four possible approaches to the basic structure of the codification scheme emerged as the task force examined the organization of the Code of Federal Regulations and of other states' administrative codes. These approaches are: (1) by statutory authorization so that the code organization would parallel the organization of the statutes, (2) by issuing agency, (3) by subject categories, and (4) by some combination of these systems. The final scheme which was developed follows the fourth approach. It is a hybrid system incorporating some features of all three of the other approaches.

The format for rules adopted under the codification system developed by the task force essentially follows the format of the Code of Federal Regulations. The headings for each section, source and authority notes, and initial outline at the beginning of each part are features of the federal format for rules which were included in the procedural rules for implementation of the codification system.

The terminology for referring to the various levels of organization of the rules also follows the federal system in certain respects. The task force believed that this consistency with the federal system will allow easier reference between the state and federal rules. Only three essential levels will be necessary to identify each rule uniquely -

TABLE TWENTY  
BASIC CODIFICATION OUTLINE ADOPTED BY THE  
SECRETARY OF STATE

Title 1.	General Provisions
Title 2.	Governmental Organization
Title 3.	Legislature
Title 4.	Governor
Title 5.	Courts
Title 8.	Agriculture and Animals
Title 11.	Alcohol, Horse Racing and Lottery
Title 14.	Commerce
Title 17.	Conservation
Title 20.	Corrections, Criminal Justice and Law Enforcement
Title 23.	Education and Cultural Resources
Title 26.	Elections
Title 29.	Emergency Services, Disasters and Civil Defense
Title 32.	Energy
Title 35.	Environmental Protection
Title 38.	Financial Institutions
Title 41.	Fire Protection
Title 44.	Government Contracts and Procurement
Title 47.	Housing and Community Development
Title 50.	Insurance
Title 53.	Intergovernmental Relations
Title 56.	Labor and Employment
Title 59.	Mental Health
Title 62.	Mining
Title 65.	Natural Resources Research
Title 68.	Professions and Occupations
Title 71.	Public Buildings, Facilities, and Real Property
Title 74.	Public Finance
Title 77.	Public Health
Title 80.	Public Officials and Employees
Title 83.	Public Utilities
Title 86.	Revenue
Title 89.	Social Services
Title 92.	Transportation
Title 95.	Veterans and Military Affairs

- title, part and section. Other levels are used for clarity of organization and grouping related rules, but are not essential for citation.

The levels of organization used in the system can be briefly summarized:

1. Titles are used to indicate broad subject areas which are understandable and salient to the public.
2. Subtitles indicate subject areas which are more focused on particular problems or issues, but involve rules of more than one state agency. Subtitle divisions are used when the subject encompassed by the title may be broader than the functions of a single major agency.
3. Chapters are used to group rules of a single agency within the subject area indicated by the title or subtitle. In only a few cases, such as the purchasing and governmental organization of rules, is the chapter level used for something other than an indication of the issuing agency.
4. Subchapters are used to group related parts under a single agency. This level will often correspond to organizational divisions of the agency, or at least to the agency's groupings of its programs.
5. Parts are used to indicate a unified set of rules related to a single function of an agency. Parts will usually be adopted under the authority of a single act by a single agency and describe a single program or function. Parts are now typically referred to in Illinois by many agencies as "sets" of rules. They will vary widely in length from two to fifty pages, but should typically be around twenty pages.
6. Subparts are used to identify major divisions within a set of rules. For example, subparts may separate the different publics or groups affected by the set of rules.
7. Sections are used to identify units which focus on a single concept. Although sections will vary widely in length, they should generally be paragraph-sized and should not usually be longer than two or three pages.

While the primary focus of the efforts of the task force was on the development of the scheme itself, other related issues were also explored. The task force was aware that eventual publication of a comprehensive administrative code was possible as a result of its efforts. It also became increasingly aware of the need for some central agency to have authority to make editorial changes in the rules to insure that the codification system is implemented effectively. The desire of the General Assembly to have the codification

system computerized, which was apparent from the language of the Act concerning the Joint Committee's approval, was also recognized by the task force.

#### Development of Senate Bill 1822

Early in the 1980 legislative session, the task force developed and submitted to the Joint Committee members and the Secretary of State a list of difficulties in the codification process which needed to be addressed through amendatory legislation. The list of these problems included:

1. Uncertainty about whether the state will provide for the publication of a code. This uncertainty makes outside experts, such as computer equipment vendors and legal publishers, unwilling to be extensively involved at this point. The task force has experienced difficulty also in drafting adequate rules to implement the codification system in view of the uncertainty about the future uses of the system.
2. Confusion regarding the usefulness of the compilations, periodic revisions and supplements provided for in Section 7(a) and (b) of the Administrative Procedure Act. If these supplements are to be superseded by a comprehensive code, their usefulness is obviously diminished. The time and expense involved for agencies in the preparation of these compilations, revisions and supplements may not be justified, if a code is to be published in the foreseeable future.
3. Potential confusion for the public which may result from compilations being published by each agency with one format and numbering system, while at the same time the agency is renumbering and reformatting its rules to comply with the codification system.
4. Lack of any schedule to spread out the work involved for the Secretary of State to make sure that agencies have adequately complied with the codification system. Under the current statutory language, each agency may wait until just before the July 1, 1984, deadline to adopt their rules in compliance with the codification scheme. While it is not expected that agencies will necessarily wait until the deadline, some method for the Secretary of State to manage the workload involved does seem desirable.
5. Unnecessary publication in the Illinois Register of rules which are simply being reformatted or renumbered to comply with the codification system may be required under the current statutory language. Even if no substantive changes are being made in the rules, the agency may still be required to repropose and readopt the rule in accordance with the rulemaking provisions of the Act simply to comply with the codification system.

Considering these problems, the Joint Committee worked with the Secretary of State and the Legislative Information System in the development of Senate Bill 1822. Besides amending the Administrative Procedure Act, the bill also included conforming amendments to the Acts authorizing the activities of the State Library and the Legislative Information System. The main provisions in the bill included: (1) authority for the Secretary of State to develop a phase-in schedule for compliance of rules with the codification schedule; (2) elimination of the requirement that agencies publish their own compilations and supplements of their rules; (3) authority for the Secretary of State to publish a comprehensive Illinois Administrative Code; (4) clarification of requirement for adoption of codified rules, allowing agencies to publish a notice of codification instead of going through the entire rulemaking process; (5) authority for renumbering and editorial changes by the State Library; and (6) authority for the Legislative Information System to computerize the text of the codified rules. An appropriation to the Legislative Information System for this project during Fiscal Year 1981 was also developed and introduced in the General Assembly.

The text of Senate Bill 1822 as enacted as Public Act 81-1348 is included as Appendix B(1) in this report (pages 262-269).

#### Codification Schedule

Based on the authority provided to the Secretary of State by Public Act 81-1348, the task force developed a suggested codification schedule and submitted it to the Secretary of State. The Secretary of State proposed the schedule as a rule and, following approval by the Joint Committee, adopted the schedule in Public Act 81-1348. This schedule is presented in Table Seventeen, indicating which titles need to be codified each year.

The State Library has been working with the agencies whose rules have been scheduled for codification by October 1, 1981. The Joint Committee's rules were scheduled during the first year, since they are included in Title One (General Provisions). The codification of the Joint Committee's rules was accomplished during 1980 in conjunction with revisions in the rules for clarification and ease of reading. The format of the Joint Committee's rules which appear as Appendix C in this report (pages 277-318) illustrates the format and structure required by the codification system.

As agencies have worked with the State Library to codify their rules, the rules are being input into the text-processing computer system operated by the Legislative

TABLE TWENTY-ONE  
SCHEDULE FOR CODIFICATION OF ALL STATE AGENCY RULES

First Year - Must be Codified by October 1, 1981:

Title 1	(General Provisions)
Title 8	(Agriculture and Animals)
Title 11	(Alcohol, Horse Racing and Lottery)
Title 17	(Conservation)
Title 41	(Fire Protection)
Title 59	(Mental Health)
Title 68	(Professions and Occupations)
Title 74	(Public Finance)

Second Year - Must be Codified by October 1, 1982:

Title 14	(Commerce)
Title 26	(Elections)
Title 29	(Emergency Services, Disasters, and Civil Defense)
Title 47	(Housing and Community Development)
Title 50	(Insurance)
Title 83	(Public Utilities)
Title 89	(Social Services)
Title 92	(Transportation)
Title 95	(Veterans and Military Affairs)

Third Year - Must be Codified by October 1, 1983:

Title 20	(Corrections, Criminal Justice and Law Enforcement)
Title 23	(Education and Cultural Resources)
Title 32	(Energy)
Title 35	(Environmental Protection)
Title 38	(Financial Institutions)
Title 56	(Labor and Employment)
Title 62	(Mining)
Title 65	(Natural Resources Research)

Fourth Year - Must be Codified by October 1, 1984:

Title 2	(Governmental Organization)
Title 3	(Legislature)
Title 4	(Governor)
Title 5	(Courts)
Title 44	(Government Contracts and Procurement)
Title 53	(Intergovernmental Relations)
Title 71	(Public Buildings, Facilities and Real Property)
Title 77	(Public Health)
Title 80	(Public Officials and Employees)
Title 86	(Revenue)

Information System. The first year of the codification is on schedule and should be completed well before the deadline. The increased public access which should result from this codification effort will be a major accomplishment to improve the rulemaking process in Illinois.

## COURT RULINGS AND ATTORNEY GENERAL OPINIONS

Government accountability is a goal that can only be achieved by employing a variety of resources and methods, one of which is legislative oversight. For the Joint Committee, that oversight function requires a constant scrutiny of the administrative rulemaking process. But actions which can affect rulemaking occur in a number of other areas of government.

For that reason, one of the responsibilities of the Joint Committee is to maintain a close watch on the various areas of government that may have an impact on agency rules and rulemaking. The review of new public acts which affect rulemaking has been discussed in a previous section of this report (see pages 104-108). In 1980, the Joint Committee also monitored Attorney General opinions, Circuit Court decisions, Appellate and Supreme Court decisions, and other actions related to the rulemaking process.

Two circuit court opinions issued in 1980 were of considerable interest to the Joint Committee because of their potential impact on interpreting the Administrative Procedure Act. Senn Park Nursing Center v. Miller, (80C4423) Cook County Circuit Court, dealt directly with the validity of an agency's administrative action. In Senn Park, the Director of the Department of Public Aid had proposed changes in the Illinois State Plan for reimbursement of Medicaid services. The Department, however, failed to publish the change as a rule.

The court ruled that because the change was a rule within the definition provided in the Administrative Procedure Act and had not been published according to the notice and publication provisions of the Act, the proposed change was invalid. The court considered, but rejected, the Department's argument that the change fell within one of the exceptions in the Act to the definition of the rule. The Department of Public Aid has appealed the decision, but the outcome was still pending at the time of publication of this report.

A similar case came out of the Fourteenth Judicial Circuit, Rock Island County. In Iowa-Illinois Gas and Electric Company, et al v. Illinois Commerce Commission, (No. 79MR99, 80MR8), the court set aside a Commission order (No. 79-R7, 11-2-79) concerning discontinuance of service during the winter months for non-payment. A number of findings were included in the decision.

Among other things, the court found that the Commission's order did not comply with the rulemaking requirements of Section 5(a) or the emergency rule requirements of Section 5(b) of the Administrative Procedure Act. In addition, the court found that the order exceeded the Commission's statutory authority under the Utilities Act, and that the order constituted an abuse of the Commission's discretion. An appeal was taken to the Appellate Court of the Third District, and a decision is still pending.

Copies of each of these decisions are included in this report as Appendix D (see pages 319-333).

The fact that no opinions interpreting the Administrative Procedure Act were issued by the Attorney General during 1980 may indicate that an encouraging trend is developing among the various agencies with respect to their rulemaking activities. A number of agencies, while in the course of their regular rulemaking, appear to have furthered their understanding of, and willingness to accept, the provisions of the Administrative Procedure Act. This belief is reinforced by the fact that a number of Attorney General opinions interpreting the Act were issued in both 1978 and 1979, and by the fact that the number of Joint Committee objections to agency rules has declined annually.

The Office of the Attorney General has been considering a request by the Judicial Inquiry Board for an opinion on the applicability of the Administrative Procedure Act to the Board. The Auditor General has cited the Board for failing to file administrative rules in recent audit reports. The Board argues that its creation by the State Constitution and the intent of the constitutional framers protects it from the interference imposed by the Act. The Joint Committee believes that the Board is covered by the Act and should be conducting its rulemaking in accordance with the Act.

It is likely that court decisions and requests for opinions from the Attorney General requiring interpretations of the various provisions of the Administrative Procedure Act will continue to define the scope of the Act more clearly. Particularly, the definitions of rule and state agency are likely to be the subject of decisions and opinions. The Joint Committee will continue to monitor these interpretations to insure the Act's effectiveness.

## SPECIFIC LEGISLATIVE RECOMMENDATIONS

The Joint Committee has developed twenty specific bills for consideration by the Illinois General Assembly as a result of its activities during 1980. These specific recommendations range from procedural changes in the Administrative Procedure Act, which would affect the manner in which each state agency conducts its rulemaking to very specific changes in statutes concerning specific programs conducted by single state agencies which involve substantive issues uncovered by the Committee.

Even the most specific bills, however, indicate the necessary interaction between the processes of enactment of programs by the legislature and the interpretation and implementation of those programs by state agencies. The Joint Committee thus plays an important role in insuring the on-going coordination of these processes.

Section 7.10 of the Administrative Procedure Act requires the Joint Committee to include these specific legislative recommendations in its annual report. This requirement was intended to insure that these recommendations are open to public scrutiny and are seriously considered by the General Assembly. Despite the inevitable detail this procedure involves, the inclusion of these specific recommendations serves these basic purposes well.

Included with the summary of each bill is a brief discussion of the Joint Committee's activities and findings which resulted in the development of the bill. Copies of each of the recommended bills follow the discussion.

### **Procedural Bills**

#### Bill One (pages 140 - 142)

Background: A provision which was added to the Administrative Procedure Act in 1979 concerning "incorporation by reference" has caused some confusion about the procedures which must be followed in adopting federal rules or trade standards. The provision was initially suggested by the Administrative Rules Commission and included in House Bill 2226 (Public Act 81-1044, effective October 1, 1979). This confusion was exacerbated by the failure of the Rules Division under the Secretary of State to develop

appropriate rulemaking to interpret and implement this provision. Prior to the addition of this provision, adoption by reference may have technically been prohibited by the Act altogether, although it was common practice despite the implications of the Act.

The specific areas of confusion have included:

(1) Does the provision mean that the incorporated materials do not need to be published in the Illinois Register?

(2) Do copies of federal rules which are readily available in the Federal Register or Code of Federal Regulations have to be filed with the Secretary of State?

(3) What if the incorporated standards simply cannot physically be placed on file with the Secretary of State?

(4) How does the section affect the requirement that the agency place a copy of its rules in its principal office for public inspection and copying?

In addition to these problems which need to be clarified, several other related issues have also been raised about incorporation by reference. These legal issues which need to be addressed are:

(1) Whether a state agency can lawfully adopt by reference the future actions of a federal agency or a trade association, using language such as "hereby adopts the regulations of the USEPA as now or hereafter amended," or "hereby adopts the standards for energy efficient building construction adopted by the American Association of Building Engineers as now or hereafter amended." While this is common legal language, its lawfulness and legal effect in this type of situation is doubtful. Especially in the second example, this may be an unlawful delegation of responsibility.

(2) Whether state agencies should be prohibited from adopting federal guidelines, policy statements, and similar documents which have not been adopted as rules under federal law.

The Joint Committee is recommending amendatory legislation to address these issues and to clarify the extent to which incorporation by reference may be utilized.

Summary: Amends the Illinois Administrative Procedure Act. Provides that federal rules and trade standards adopted by reference in agency rules do not need to be published in the Illinois Register. Requires incorporated materials to be filed with the Secretary of State and in the agency's principal office. Allows the Secretary of State to waive filing with his office based on certain findings. Prohibits adoption by reference of future amendments to documents and of federal policies or rules not adopted under the Federal Administrative Procedure Act.

Bill Two (pages 143 - 144)

Background: There has been increasing attention in recent years with the complexity of language in all kinds of legal documents. Insurance policies and consumer contracts as well as federal rules and regulations have been the subject of efforts to simplify legal language.

In Illinois the complexity of the language of agency rules and regulations has been cited as one of the major problems with the regulatory process by various public groups. The Joint Committee has made some efforts to make agencies draft rules in clear and simple English. In reviewing existing rules of agencies in its five-year review program, the Committee has utilized measures of the reading level and language complexity of rules. These measures have been useful in discovering ways to make rules more easily understood by the public.

Several bills have been introduced in recent years in the General Assembly to require insurance policies and state agency rules to be written in "clear and plain" language, although they have not been successful. Several other states, including New York and Connecticut, have passed plain English laws which appear to have had positive effects on the readability of legal documents.

The Joint Committee is recommending specific legislation to require agency rules to be written in understandable language.

Summary: Amends the Illinois Administrative Procedure Act. Requires all state agency rules to be written in clear and plain English. Provides simple standards for clear and plain English.

Bill Three (pages 145 - 148)

**Background:** One of the procedural problems the Joint Committee has faced in reviewing proposed rules is the lack of any final deadline for the adoption of proposed rules. The Committee often encounters situations in which rules are left dangling with no final determination by the agency about whether to withdraw the rulemaking or adopt it. Theoretically, such dangling rules could be adopted at any time without any additional notice, although a legal question could be raised about the adequacy of the notice which had been given when the rule was first proposed.

One particular situation in which this issue was a serious problem involved rules proposed by the Department of Insurance concerning credit life insurance. There was extensive controversy when the rules were proposed, but the agency continued the rulemaking process. When additional pressure was put on the agency by the insurance industry, the Department simply left the rules in limbo. The rules could theoretically be adopted now, even though they were proposed more than a year ago.

This issue has been discussed by Professor Bonfield and the NCCUSL Committee drafting the new model State Administrative Procedure Act. Their latest draft suggests a final deadline of 180 days, or six months. A rather frank drafter's note with this section states, "This subsection assures that an agency may not use undue delay between publication of a notice of proposed rule adoption and actual adoption of a rule pursuant thereto as a means of defusing or circumventing widespread public opposition to its action." A similar deadline is included in the Iowa Administrative Procedure Act.

The Joint Committee is recommending this amendatory legislation to resolve the problems which could arise on this question.

**Summary:** Amends the Illinois Administrative Procedure Act. Prohibits the adoption or filing with the Secretary of State of any rulemaking more than one year after the publication of the notice of proposed rulemaking in the Illinois Register.

Bill Four (pages 149 - 152)

**Background:** The Illinois Administrative Procedure Act, unlike many other states' Administrative Procedure Acts, has never included any provision requiring agencies to

hold public hearings on proposed rules. The latest draft of the model state administrative procedure act suggests a provision which would require agencies to hold hearings on proposed rules if petitioned by 25 interested persons, an association representing 25 interested persons, or by various elected officials.

This type of provision would avoid the unnecessary burden of requiring a public hearing on each proposed rulemaking, while providing such hearings in situations in which they would be most productive. The Committee is recommending addition of this requirement to the Administrative Procedure Act.

Summary: Amends the Illinois Administrative Procedure Act. Requires agencies to hold public hearings on proposed rules when requested to do so by 25 interested persons, an association representing at least 25 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government. Prescribes time during which such hearings may be held. Allows each agency to prescribe rules to govern the conduct of such hearings.

#### Bill Five (pages 153 - 155)

Background: The Joint Committee has experienced two minor problems in informing the public adequately concerning the rulemaking process: (1) members of the public are often unaware that an agency has sent a Second Notice to the Joint Committee on a specific proposed rulemaking, and (2) it is impossible to provide copies of all the reports and documents prepared for the Joint Committee to all the members of the public who may be interested in them. These problems need to be addressed through amendments to the Illinois Administrative Procedure Act. The Joint Committee is recommending these necessary amendments.

Summary: Amends the Illinois Administrative Procedure Act. Provides that the Joint Committee on Administrative Rules may submit for publication in the Illinois Register lists of dates rulemaking notices were received and will be considered. Allows the Joint Committee to charge reasonable fees for copies of documents or publications.

Bill Six (pages 156 - 157)

Background: In its review of the Department of Revenue's rules under the Retailers' Occupation Tax Act, the Joint Committee discovered that the Department issues "binding opinions" in the form of letters to taxpayers. These letters, however, are kept confidential by the Department. The Joint Committee is recommending specific legislation to address this issue (see Bill Eight, pages 164-165), but believes that a provision of the Administrative Procedure Act which was intended to cover this type of situation should also be clarified and strengthened.

The Committee is recommending this bill to clarify and strengthen the provision of the Administrative Procedure Act concerning "declaratory rulings." This will protect against the type of problem uncovered in the Department of Revenue developing in other agencies.

Summary: Amends the Administrative Procedure Act to clarify the definition of "declaratory rulings" and to require such rulings to be made publically available. Allows the deletion of confidential information from such rulings.

**Recommended Substantive Bills**

Although these bills involve substantive issues, the Joint Committee believes that they should be considered by the General Assembly. Members of the Joint Committee will introduce and sponsor these bills to insure that they are considered during the 1981 legislative session.

Bill Seven (pages 158 - 163)

Background: In April 1980, the Department of Revenue proposed revisions in its rules under the Bingo License and Tax Act. These revisions were also adopted on an emergency basis at that time. The Joint Committee objected to the rules at its hearing in August 1980 (see pages 61-62). The Department did not modify the rules to meet the Committee's objections.

The objections of the Joint Committee involve two provisions in the rules which appear to go beyond the Department's authority under the Act. The first provision requires an organization to obtain a suppliers license to allow an affiliated organization (such as the Women's Auxiliary of a VFW Post) to use its premises to conduct bingo. The Committee felt that such an interpretation of the Act was in conflict with its legislative intent. The second provision requires a person to be a bona fide member of an organization for at least a year before being allowed to assist in operating or managing bingo for the organization.

Questions were also raised about the Department's authority to prohibit back-to-back bingo games and advertising which might be deceptive; however, the Joint Committee did not formally object to these provisions. These additional issues have been the subject of several court challenges to the enforcement of the rules.

The Joint Committee is recommending legislation to address the two issues raised in its formal objection.

Summary: Amends the Bingo License and Tax Act. Provides that organizations do not have to obtain a bingo suppliers license to provide premises to conduct bingo to an affiliated or auxiliary organization. Changes requirement that persons managing bingo must be bona fide members of the organization to a requirement that they must have been members for at least 30 days.

#### Bill Eight (pages 164 - 165)

Background: In its review of the Department of Revenue's rules under the Retailers' Occupation Tax Act, the Joint Committee discovered that the Department issues "binding opinions" in the form of letters to taxpayers. These letters, however, are kept confidential by the Department, so that another taxpayer with a similar situation may be unaware of his tax status simply because he did not raise the question. The problem is aggravated by the fact that the Department relies on these letters as precedent.

The Department cited the need for confidentiality and administrative difficulties involved in making them publically available as the reasons for its current policy. The Joint Committee believes that both of these concerns can be accomodated, but that the

right of taxpayers to be fully informed of the Department's policies should be the overriding factor. To address these issues, the Joint Committee is recommending two bills: one will address the specific problem in the Department of Revenue, while the other will amend the Administrative Procedure Act to guard against similar problems in other agencies (see Bill Six, pages 156-157).

**Summary:** Amends the powers of the Department of Revenue in the Civil Administrative Code. Provides explicit authority to the Department to issue rulings, opinions or letters on the applicability of tax statutes and rules to individual taxpayers' situations. Requires these rulings, opinions and letters to be publically available with confidential information deleted. Prohibits the Department from relying on rulings, opinions or letters issued prior to the effective date of this Act.

### **Suggested Substantive Bills**

The following bills have been developed by the Committee to point out areas of concern and possible approaches to resolving the issues the Committee has raised. These bills will be referred to the standing committees of the General Assembly which deal with the substantive issues involved. The Joint Committee does not feel that its function is to make the policy decisions involved in these situations, but is pointing out the issues which should be resolved to the appropriate legislative committees.

#### Bill Nine (pages 166-191)

**Background:** In December 1979, the Department of Revenue proposed rules to implement the reduced sales tax on food and medicine which had been enacted by the General Assembly in the fall (PA 81-3rd SS-1, effective January 1, 1980). At the same time, the Department adopted identical rules on an emergency basis. After reviewing the rules, the Joint Committee issued an objection to one section of the rules in May 1980 (see pages 60-61).

The objectionable provision stated that "any food sold by a food service establishment shall not qualify for the reduced rate." The Joint Committee found that this provision violated the Act by differentiating between the type of establishments instead of between the items themselves and their intended use. The Department

responded by refusing to modify the rule, although it made some changes in the language of the provision. One of the Department's changes would require a food service establishment to have separate cash registers for sale of food eligible for the reduced tax and to "physically partition" such sales from facilities for consumption on the premises.

The Joint Committee is suggesting legislation to clarify the Act and to confine the Department's rulemaking within the limits imposed by the statute.

Summary: Amends the Retailers' Occupation Tax Act, Use Tax Act, Service Use Tax Act and Service Occupation Tax Act in relation to the reduced tax rate for sales of food. Provides that the determination of whether the sale of a food item is eligible for the reduced rate may not be based on the type of establishment at which the sale is made. Requires such determination to be made solely on the basis of the intended use of the item. Prohibits the Department from requiring physical separation of qualifying sales from facilities for consumption of food on the premises.

#### Bill Ten (pages 192 - 194)

Background: In April 1980, the Attorney General proposed a comprehensive set of rules to regulate buyers clubs under the authority of the Consumer Fraud and Deceptive Business Practices Act. At its hearing in June 1980, the Joint Committee on Administrative Rules objected to these proposed rules (see pages 62-63). The authority for the adoption of these rules is also being challenged in a current court case brought against the Attorney General by a buyers club.

The Joint Committee cited two reasons for its objection. First, the Act does not authorize the type of extensive regulation of particular businesses which are contained in Parts III (Financial Requirements) and IV (Required Filings with the Attorney General) of the rules. Second, one provision of the rules [Rule 202(g)] went beyond the statutory language in prohibiting chain referrals.

The Attorney General refused to withdraw or modify the rules. In response, the Joint Committee is suggesting legislation to specifically authorize this type of rulemaking by the Attorney General and to broaden the chain referral prohibition to conform to the rules.

Summary: Amends the Consumer Fraud and Deceptive Business Practices Act. Authorizes the Attorney General to adopt rules to regulate buyers clubs and discount buying organizations. Specifies types of requirements which may be included in such rules. Changes the prohibition against chain referrals to include situations in which a discount or credit is not contingent on the sale of merchandise to the buyer to whom the seller is referred.

Bill Eleven (pages 195 - 202)

Background: General Order 205 proposed by the Illinois Commerce Commission in October 1979, would have prohibited smoking in passenger train stations of 3,000 square feet or less. The Joint Committee questioned the Commission's authority for this proposed rule and formally objected to the rule in March 1980 (see pages 64-65). The Commission responded in June 1980 by refusing to modify or withdraw the proposed rule.

The Commission contends that Section 57 of an Act concerning public utilities authorizes this rule, since it allows the Commission "to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public." The Joint Committee does not believe that this broad grant of authority can be construed in such a way that the General Assembly intended to authorize the Commission to regulate smoking in train stations. The Committee has developed two alternative bills to remedy this ambiguity: one would specifically authorize and the other would specifically prohibit these rules. The General Assembly should act decisively to resolve this issue in one manner or the other.

Summary (Alternative A): Amends an Act concerning public utilities. Authorizes the Illinois Commerce Commission to regulate smoking in passenger train stations.

Summary (Alternative B): Amends an Act concerning public utilities. Provides that the Illinois Commerce Commission's authority is limited to the regulation of the equipment and operation of utilities and does not extend to regulating smoking in passenger train stations.

Bill Twelve (pages 203 - 215)

Background: The Commissioner of Banks and Trust Companies proposed rules in December 1979 to regulate the use of electronic fund transfers and automatic teller machines. The rules were intended to implement the Electronic Fund Transfer Transmission Facility Act and amendments to the Illinois Banking Act, both of which took effect January 1, 1980. The Joint Committee noted several provisions in the rules which seemed to conflict with the statutory authority for the rules (see pages 65-66). In response to the Committee's objection issued in February 1980, the Commissioner refused to modify or withdraw the proposed rules.

The three provisions which the Joint Committee found to conflict with the statute concern (1) the sharing of automatic teller machines with financial institutions which are not banks, (2) the requirement that a notice of deployment of a point of sale terminal must be submitted 30 days prior to the deployment, and (3) the information which must be included in a notice of deployment. In each case, the Joint Committee believes that the rules go beyond the Commissioner's authority under the acts.

To remedy these problems, the Joint Committee is suggesting legislation to amend the acts to expand the Commissioner's authority to deal with automatic teller machine shared by banks and other financial institutions and to revise the statutory language requiring notices of deployment of point of sale terminals.

Summary: Amends the Illinois Banking Act and the Electronic Fund Transfer Transmission Facility Act. Provides for the sharing of automatic teller machines between banks and other financial institutions. Allows Commissioner of Banks and Trust Companies to require notice of deployment of point of sale terminals to be submitted 30 days prior to deployment and to require additional necessary information to be included in the notice.

Bill Thirteen (pages 216 - 229)

Background: The Department of Registration and Education is required under the Illinois Veterinary Medicine and Surgery Practice Act to set standards of preliminary education which veterinary colleges must follow in admitting students. Several other

Acts also require setting preliminary education standards. However, Public Act 81-1381 (House Bill 2771) eliminated the Department's general authority for setting preliminary education standards and the Department has generally relied on its approval of schools and curricula rather than actually setting such standards. This requirement thus conflicts with the apparent intent of Public Act 81-1381 and is probably unnecessary anyway.

The Joint Committee considered this problem as part of its five-year review in its review of the Department's rules to license and regulate veterinarians. The problem was also encountered in relation to the regulation of several other occupations. The Joint Committee believes that these preliminary education standards are unnecessary and is suggesting legislation to eliminate them.

**Summary:** Amends the Illinois Veterinary Medicine and Surgery Practice Act, the Illinois Medical Practice Act, and various other Acts regulating occupations. Eliminates requirement that the Department of Registration and Education set standards for preliminary education for entrance into professional schools.

Bill Fourteen (pages 230 - 233)

**Background:** The Department of Registration and Education has adopted rules concerning the recording of hearings and rules of practice in administrative hearings. The authority for these Department-wide rules has been questioned, however, because of statutory language which seems to limit the Department's rulemaking authority by requiring all rules to be approved by the examining committees for the various professions. The Joint Committee raised this issue with the Department in its review of these rules as part of its five-year review program.

The Joint Committee is suggesting legislation to clarify the Department's authority to adopt Department-wide rules. The approval of the examining committees will still be required before the Department can adopt rules relating to any specific profession.

**Summary:** Amends the Civil Administrative Code in relation to the powers of the Department of Registration and Education. Provides that the prohibition against the Department's acting without the action and report of the examining committees does not

apply to the adoption of rules to govern the general operation of the Department under the Open Meetings Act or other Acts which authorize such rulemaking.

Bill Fifteen (pages 234 - 236)

Background: In its review of existing rules concerning regulation of occupations, the Joint Committee reviewed the rules of the Department of Registration and Education under the Illinois Land Surveyors Act. The Joint Committee pointed out to the Department that although the Act provided for the registration and licensing of individuals as Registered Land Surveyors in Training, neither the Act nor the rules provided any necessity for or benefit from being so registered. It is not currently a prerequisite for becoming a Registered Land Surveyor nor does it allow the individual to perform any services, which he could not perform without this registration.

The Department agreed with the Joint Committee that the purpose of registration as a Registered Land Surveyor in Training needs to be clarified in the Act. The Joint Committee is suggesting legislation to accomplish that purpose.

Summary: Amends the Illinois Land Surveyors' Act. Provides that a Registered Land Surveyor in Training may engage in land surveying under the general supervision of a Registered Land Surveyor. Requires an individual to be registered as a Land Surveyor in Training to be eligible for registration as a Land Surveyor.

Bill Sixteen (pages 237 - 240)

Background: In reviewing existing rules of the Department of Registration and Education concerning regulation of occupations as part of its five-year review program, the Joint Committee noted a number of instances in which the Department had included "restrictive endorsement" provisions in the rules. These rules required an applicant to submit endorsements from individuals who are already licensed to qualify for licensing. The Department initially argued that such endorsements were justified by language in the various occupational licensing acts which require an applicant to be of "good moral character." However, the Joint Committee argued that there is no reason to believe that a licensed individual is a better judge of the moral character of an applicant than anyone else and that the effect, if not the purpose, of such provisions was to allow the occupation

to control entry into the occupation. In most cases, the Department agreed to change these provisions.

In two instances, the Joint Committee believed that such restrictive endorsements might be proper because of the unique nature of the professionals involved: physicians and veterinarians. The Joint Committee is suggesting legislation to specifically allow these provisions in these two instances.

Summary: Amends the Illinois Medical Practice Act and the Illinois Veterinary Medicine and Surgery Practice Act. Provides that the Department of Registration and Education may require an applicant for licensure under the Acts to submit endorsements of the applicant's qualifications to be licensed from two or three individuals currently licensed under the Acts.

Bill Seventeen (pages 241 - 244)

Background: The Beauty Culture Act establishes two advisory committees which have duplicative functions: Beauty Culture Committee and Beauty Culture Advisory Board. The members have the same qualifications and there is no delineation of any different functions between the committees. In fact, the Department of Registration and Education has not even appointed members to the Advisory Board.

The Joint Committee discovered this apparent duplication in its review of the Department's rules under the Beauty Culture Act as part of its five-year review program. To remedy this problem, the Joint Committee is suggesting legislation to eliminate the Beauty Culture Advisory Board.

Summary: Amends the Beauty Culture Act. Eliminates the Beauty Culture Advisory Board. Transfers functions of Beauty Culture Advisory Board to the Beauty Culture Committee.

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_ BY

## BILL ONE

Background and Summary  
pages 126-128

SYNOPSIS: (Ch. 127, par. 1006.01)

Amends the Administrative Procedure Act. Provides that the text of federal rules and trade association standards adopted by reference in agency rules do not have to be filed with the Secretary of State or published in the Illinois Register, but the state agency must include a specific citation to the federal rule or trade association standard in the state rule. Prohibits state agencies from adopting federal rules by reference unless such rules were adopted by a federal agency under the Federal Administrative Procedure Act. Also prohibits the adoption by reference of future amendments to rules.

LRB8201838SCcb

A BILL FOR

1 AN ACT to amend Section 6.01 of "The Illinois 52  
2 Administrative Procedure Act", approved September 22, 1975, 53  
3 as amended. 54

4 ~~Be it enacted by the People of the State of Illinois:~~ 58  
5 ~~represented in the General Assembly:~~

6 Section 1. Section 6.01 of "The Illinois Administrative 60  
7 Procedure Act", approved September 22, 1975, as amended, is 61  
8 amended to read as follows:

(Ch. 127, par. 1006.01) 63

9 Sec. 6.01. Form and publication of notices.) (a) The 65  
10 Secretary of State may prescribe reasonable rules concerning 66  
11 the form of documents to be filed with him, and may refuse to 67  
12 accept for filing such certified copies as are not in 68  
13 compliance with such rules. In addition, the Secretary of  
14 State shall publish and maintain the Illinois Register and 69  
15 may prescribe reasonable rules setting forth the manner in 70  
16 which agencies shall submit notices required by this Act for 71  
17 publication in the Illinois Register. The Illinois Register 72  
18 shall be published at least once each week on the same day 73  
19 unless such day is an official State holiday in which case 74  
20 the Illinois Register shall be published on the next  
21 following business day and sent to subscribers who subscribe 75  
22 for the publication with the Secretary of State. The 76  
23 Secretary of State may charge a subscription price to  
24 subscribers that covers mailing and publication costs. 77

25 (b) ~~Notwithstanding any other provision of this Act,~~ If 79  
26 an agency proposes or adopts federal rules or portions 80  
27 thereof, the requirement that the full text thereof be filed 81  
28 ~~with the Secretary of State and published in the Illinois~~ 82  
29 ~~Register shall be satisfied by filing with the appropriate~~ 83  
30 ~~notice or photographic or other reproduction of such rules or~~  
31 ~~including in the text of the proposed or adopted rules a~~ 84  
32 statement that the agency proposes to adopt or is adopting 85

1 such federal rules with a specific citation to the Federal 86  
 2 Register or Code of Federal Regulations where the text 87  
 3 appears. Only federal rules which have been duly adopted by  
 4 a federal agency under the Federal Administrative Procedure 88  
 5 Act may be adopted by reference as provided in this Section. 89  
 6 If an agency proposes or adopts as rules the standards or 90  
 7 guidelines, or portions thereof, of any professional, trade 91  
 8 or other association or entity, the requirement that the full  
 9 text thereof be filed with the Secretary of State and 93  
 10 published in the Illinois Register shall be satisfied by 94  
 11 including in the text of the proposed or adopted rules a  
 12 specific citation to the standards or guidelines and filing 95  
 13 with the Secretary of State appropriate notice a photographic 96  
 14 or other reproduction of such standards or guidelines. 97  
 15 However, if the Secretary of State determines that a  
 16 particular set of such standards or guidelines may not 98  
 17 conveniently be filed with his office and that the set of 99  
 18 standards or guidelines are reasonably available to the 100  
 19 general public and affected persons, he may waive the  
 20 requirement of filing a photographic or other reproduction of 101  
 21 such standards or guidelines. Such a waiver shall be in 102  
 22 writing and shall include a statement of the specific reasons 103  
 23 for the waiver. A copy of such waivers shall be sent to the  
 24 Joint Committee on Administrative Rules. This Section shall 104  
 25 not permit an agency to adopt future amendments in the rules, 105  
 26 standards or guidelines without following the procedures 106  
 27 required by this Act. Adoption by reference under this 107  
 28 Section is limited to the adoption of rules, standards or  
 29 guidelines as of a certain date. Nothing in this Section 108  
 30 shall relieve the agency of the requirement that the full 109  
 31 text of adopted rules, including federal rules, standards and 110  
 32 guidelines adopted by reference as provided in this Section, 111  
 33 be filed in the agency's principal office under Section 5 of 112  
 34 this Act.

**82nd GENERAL ASSEMBLY  
State of Illinois**

1981 and 1982

INTRODUCED \_\_\_\_\_ BY

**BILL TWO**

Background and Summary  
page 128

**SYNOPSIS:** (Ch. 127, new par. 1004.03)

Amends the Administrative Procedure Act.  
Requires State agencies to formulate rules in plain and clear  
English, and provides standards for determining whether a  
rule is formulated in such manner.

LRB8201796PLtc

Fiscal Note Act  
may be applicable

**A BILL FOR**

1 AN ACT to add Section 4.03 to "The Illinois 47  
2 Administrative Procedure Act", approved September 22, 1975, 48  
3 as amended. 49

4 As enacted by the People of the State of Illinois, 53  
5 represented in the General Assembly:

6 Section 1. Section 4.03 is added to "The Illinois 55  
7 Administrative Procedure Act", approved September 22, 1975, 56  
8 as amended, the added Section to read as follows:

(Ch. 127, new par. 1004.03) 58

9 Sec. 4.03. In addition to other rule-making requirements 60  
10 imposed by law, each agency shall formulate all rules in 61  
11 plain and clear English. A rule is formulated in plain and 62  
12 clear English if it substantially complies with all of the 63  
13 following:

14 (1) It is written in simple words used in their commonly 65  
15 understood senses that convey meanings clearly and directly. 66

16 (2) It is written in the present tense using positive 68  
17 statements whenever possible:

18 (3) It is written in primarily simple, rather than 70  
19 compound or complex, sentences that are as short as possible: 71

20 (4) It limits definitions to words that cannot be 73  
21 properly explained or qualified in the text; and 74

22 (5) It is organized in a clear and coherent manner. 76

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL THREE

Background and Summary  
page 129

SYNOPSIS: (Ch. 127, par. 1005.01)

Amends the Administrative Procedure Act.  
Provides that no rule may be adopted or filed with the  
Secretary of State, more than one year after notice of the  
proposed rule first appears in the Illinois Register.

LRB8201799RLtc

Fiscal Note Act  
may be applicable

A BILL FOR

1 AN ACT to amend Section 5.01 of "The Illinois 47  
2 Administrative Procedure Act", approved September 22, 1975, 48  
3 as amended. 49

4 Be it enacted by the People of the State of Illinois, 53  
5 represented in the General Assembly:

6 Section 1. Section 5.01 of "The Illinois Administrative 55  
7 Procedure Act", approved September 22, 1975, as amended, is 56  
8 amended to read as follows:

(Ch. 127, par. 1005.01) 58

9 Sec. 5.01. General rulemaking.) In all rulemaking to 60  
10 which Section 5.02 or 5.03 does not apply, each agency shall: 61

11 (a) give at least 45 days' notice of its intended action 63  
12 to the general public. This first notice period shall 64  
13 commence on the first day the notice appears in the Illinois 65  
14 Register. The first notice shall include a text of the 66  
15 proposed rule, or the old and new materials of a proposed  
16 amendment, or the text of the provision to be repealed; the 67  
17 specific statutory citation upon which the proposed rule, the 68  
18 proposed amendment to a rule or the proposed repeal of a rule 69  
19 is based and is authorized; a complete description of the 70  
20 subjects and issues involved; and the time, place and manner  
21 in which interested persons may present their views and 71  
22 comments concerning the intended action.

23 During the first notice period, the agency shall provide 73  
24 all interested persons who submit a request to comment within 74  
25 the first 14 days of the notice period reasonable opportunity 75  
26 to submit data, views, arguments or comments, which may, in 76  
27 the discretion of the agency, be submitted either orally or 77  
28 in writing or both. The notice published in the Illinois  
29 Register shall indicate the manner selected by the agency for 79  
30 such submissions. The agency shall consider all submissions 79  
31 received.

32 (b) provide up to 45 days additional notice of its 81

1 intended action to the Joint Committee on Administrative 32  
 2 Rules. The second notice period shall commence on the day 83  
 3 written notice is received by the Joint Committee, and shall 34  
 4 expire 45 days thereafter unless prior to that time the  
 5 agency shall have received a statement of objection from the 85  
 6 Joint Committee, or notification from the Joint Committee 86  
 7 that no objection will be issued. The written notice to the 37  
 8 Joint Committee shall include the text and location of any 38  
 9 changes made to the proposed rule during the first notice  
 10 period, and, if written request has been made by the Joint 39  
 11 Committee within 30 days after initial notice appears in the 90  
 12 Illinois Register pursuant to paragraph (a) of this Section, 91  
 13 shall include an analysis of the economic and budgetary 92  
 14 affects of the proposed rule. After commencement of the 94  
 15 second notice period, no substantive change may be made to a  
 16 proposed rule unless it is made in response to an objection 95  
 17 or suggestion of the Joint Committee.

18 (c) after the expiration of 45 days, after notification 97  
 19 from the Joint Committee that no objection will be issued, or 98  
 20 after response by the agency to a statement of objections 99  
 21 issued by the Joint Committee, whichever is applicable, the 100  
 22 agency shall file, pursuant to Section 6 of this Act, a 101  
 23 certified copy of each rule, modification, or repeal of any  
 24 rule adopted by it, which shall be published in the Illinois 102  
 25 Register. Each rule hereafter adopted under this Section is 103  
 26 effective upon filing, unless a later effective date is 104  
 27 required by statute or is specified in the rule. 105

28 (d) No rule or modification or repeal of any rule may be 107  
 29 adopted, or filed with the Secretary of State, more than 108  
 30 year after the date the first notice period for the 109  
 31 rulemaking under paragraph (a) commenced, any period during 110  
 32 which the rulemaking is prohibited from being filed under 111  
 33 Section 7.02a shall not be considered in calculating this  
 34 one-year time period. This paragraph (d) applies to any rule 112  
 35 or modification or repeal of any rule which has not been 113

-3-

L338201799ALtc

1 filed with the Secretary of State prior to the effective date 114  
2 of this amendatory Act of 1981.

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL FOUR

Background and Summary  
pages 129-130

SYNOPSIS: (Ch. 127, par. 1005.01)

Amends the Illinois Administrative Procedure Act. Requires agencies to hold public hearings on proposed rules when requested to do so by 25 persons, an association representing at least 25 persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government. Prescribes time during which such hearings may be held. Allows each agency to prescribe rules to govern the conduct of such hearings.

LRB 8201800BDmk

Fiscal Note Act  
may be applicable

A BILL FOR

1 AN ACT to amend Section 5.01 of "The Illinois 49  
2 Administrative Procedure Act", approved September 22, 1975, 50  
3 as amended. 51

4       Be it enacted by the People of the State of Illinois:       55  
5       represented in the General Assembly:

6 Section 1. Section 5.01 of "The Illinois Administrative 57  
7 Procedure Act", approved September 22, 1975, as amended, is 58  
8 amended to read as follows:

(Cn. 127, par. 1005.01) 60

9       Sec. 5.01. General rulemaking.) In all rulemaking to       o2  
10   which Section 5.02 or 5.03 does not apply, each agency shall:       o3

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include a text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed; the specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized; a complete description of the subjects and issues involved; and the time, place and manner in which interested persons may present their views and comments concerning the intended action.

23 During the first notice period, the agency shall provide 75  
24 all interested persons who submit a request to comment within 76  
25 the first 14 days of the notice period reasonable opportunity 77  
26 to submit data, views, arguments or comments, which may, in 78  
27 the discretion of the agency, be submitted either orally or 79  
28 in writing or both. The notice published in the Illinois  
29 Register shall indicate the manner selected by the agency for 80  
30 such submissions. The agency shall consider all submissions 81  
31 received.

32 The agency shall hold a public hearing on the proposed 03

1 rulemaking during the first notice period in the following 84  
 2 cases: (1) the agency finds that a public hearing would 85  
 3 facilitate the submission of views and comments which might 86  
 4 not otherwise be submitted; (2) the agency receives a request 87  
 5 for a public hearing within the first 14 days after 88  
 6 publication of the notice of proposed rulemaking in the  
 7 Illinois Register from 25 interested persons or association 89  
 8 representing a least 25 interested persons; the Governor, the  
 9 Joint Committee on Administrative Rules, or a unit of local 91  
 10 government which may be affected. At the public hearing, the 92  
 11 agency shall allow interested persons to present views and  
 12 comments on the proposed rulemaking. A public hearing may 93  
 13 not be held on a proposed rulemaking less than 22 days after 94  
 14 publication of the notice of proposed rulemaking in the 95  
 15 Illinois Register or less than 20 days before submission of 96  
 16 the notice required under paragraph (2) of this Section to  
 17 the Joint Committee on Administrative Rules. Each agency may 97  
 18 prescribe reasonable rules for the conduct of public hearings 98  
 19 on proposed rulemaking to prevent undue repetition at such 99  
 20 hearings. Such hearings must be open to the public and 100  
 21 recorded by stenographic or mechanical means. 101  
 22 (b) provide up to 45 days additional notice of its 103  
 23 intended action to the Joint Committee on Administrative 104  
 24 Rules. The second notice period shall commence on the day 105  
 25 written notice is received by the Joint Committee, and shall 106  
 26 expire 45 days thereafter unless prior to that time the  
 27 agency shall have received a statement of objection from the 107  
 28 Joint Committee, or notification from the Joint Committee 108  
 29 that no objection will be issued. The written notice to the 109  
 30 Joint Committee shall include the text and location of any 110  
 31 changes made to the proposed rule during the first notice  
 32 period, and, if written request has been made by the Joint 111  
 33 Committee within 30 days after initial notice appears in the 112  
 34 Illinois Register pursuant to Paragraph (a) of this Section, 113  
 35 shall include an analysis of the economic and budgetary 114

1 effects of the proposed rule. After commencement of the 118  
2 second notice period, no substantive change may be made to a  
3 proposed rule unless it is made in response to an objection 119  
4 or suggestion of the Joint Committee.  
5 (c) after the expiration of 45 days, after notification 121  
6 from the Joint Committee that no objection will be issued, or 122  
7 after response by the agency to a statement of objections 123  
8 issued by the Joint Committee, whichever is applicable, the 124  
9 agency shall file, pursuant to Section 5 of this Act, a 125  
10 certified copy of each rule, modification, or repeal of any  
11 rule adopted by it, which shall be published in the Illinois 126  
12 Register. Each rule hereafter adopted under this Section is 127  
13 effective upon filing, unless a later effective date is 128  
14 required by statute or is specified in the rule. 129

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL FIVE

Background and Summary  
page 130

SYNOPSIS: (Ch. 127, par. 1007.02)

Amends the Administrative Procedure Act to permit the Joint Committee on Administrative Rules to submit for publication in the Illinois Register the dates that rulemaking notices were received and when the proposed rules will be considered. Permits JCAR to charge reasonable fees for copying and printing.

LRB8201840ASjs

Fiscal Note Act  
may be applicable

A BILL FOR

1 AN ACT to amend Section 7.02 of "The Illinois 48  
2 Administrative Procedure Act", approved September 22, 1975, 49  
3 as amended. 50

4 ~~Be it enacted by the People of the State of Illinois,~~ 54  
5 ~~represented in the General Assembly:~~

6 Section 1. Section 7.02 of "The Illinois Administrative 55  
7 Procedure Act", approved September 22, 1975, as amended, is 57  
8 amended to read as follows:

(Ch. 127, par. 1007.02) 59

9 Sec. 7.02. (a) The Joint Committee on Administrative 61  
10 Rules, is hereby created. The Joint Committee shall be 62  
11 composed of 15 members, 4 members appointed by the President 63  
12 of the Senate and 4 by the Senate Minority Leader, and 4 64  
13 members appointed by the Speaker of the House of 65  
14 Representatives and 4 by the House Minority Leader.

15 Members of the Joint Committee shall be appointed during 67  
16 the Month of July of each odd numbered year for 2 year terms 68  
17 beginning August 1, and until their successors are appointed 69  
18 and qualified. In the event of a death of a member or if a 70  
19 member ceases to be a member of the General Assembly a 71  
20 vacancy shall exist. vacancies shall be filled for the time  
21 remaining of the term in the same manner as the original 72  
22 appointments. All appointments shall be in writing and filed 73  
23 with the Secretary of State as a public record. 74

24 (b) The Joint Committee shall organize during the month 75  
25 of September each odd numbered year by electing a Chairman 77  
26 and such other officers as it deems necessary. The 78  
27 chairmanship of the Joint Committee shall be for a 2 year 79  
28 term and may not be filled in 2 successive terms by persons  
29 of the same political party. Members of the Joint Committee 80  
30 shall serve without compensation, but shall be reimbursed for 81  
31 expenses. The Joint Committee shall hold monthly meetings 82  
32 and may meet oftener upon the call of the Chairman or 4 83

1 members. A quorum of the Joint Committee consists of a 84  
2 majority of the members.

3 (c) When feasible the agenda of each meeting of the 85  
4 Joint Committee shall be submitted to the Secretary of State 87  
5 to be published at least 5 days prior to the meeting in the 88  
6 Illinois Register. The Joint Committee may also weekly or 89  
7 as often as necessary submit for publication in the Illinois 90  
8 Register lists of the dates of notices under Section 5.01 of  
9 this Act were received and the dates at which the proposed 91  
10 rulemakings will be considered. The provisions of this 93  
11 subsection shall not prohibit the Joint Committee from acting  
12 upon an item that was not contained in the published agenda. 94

13 (d) The Joint Committee shall appoint an Executive 95  
14 Director who shall be the staff director. The Executive 97  
15 Director shall receive a salary to be fixed by the Joint 98  
16 Committee.

17 The Executive Director shall be authorized to employ and 100  
18 fix the compensation of such necessary professional, 101  
19 technical and secretarial staff and prescribe the duties of 102  
20 such staff.

21 (e) A permanent office of the Joint Committee shall be 104  
22 in the State Capitol complex wherein the Space Needs 105  
23 Commission shall provide suitable offices. 106

24 If the Joint Committee may charge reasonable fees for 108  
25 copies of documents or publications to cover the cost of 109  
26 copying or printing. 110

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL SIX

Background and Summary  
page 131

SYNOPSIS: (Ch. 127, par. 1009)

Amends the Administrative Procedure Act to require that agencies subject to the Act publish and make available for public inspection declaratory rulings and when such rulings are of general applicability, formulate them into rules.

LRB8202135GLdv

A BILL FOR

1	AN ACT to amend Section 9 of "The Illinois Administrative	51
2	Procedure Act", approved September 22, 1975, as amended.	53
3	<del>Be it enacted by the People of the State of Illinois,</del>	57
4	<del>represented in the General Assembly:</del>	
5	Section 1. Section 9 of "The Illinois Administrative	59
6	Procedure Act", approved September 22, 1975, as amended, is	60
7	amended to read as follows:	
	(Ch. 127, par. 1009)	62
8	Sec. 9. Declaratory Rulings by Agencies.) Each agency	64
9	may in its discretion provide by rule for the filing and	65
10	prompt disposition of petitions or requests for declaratory	66
11	rulings as to the applicability to the person presenting the	67
12	petition or request of any statutory provision enforced by	68
13	the agency or of any rule or order of the agency.	69
14	Declaratory rulings shall not be appealable. The agency	70
15	shall publish, maintain as a public record and make available	
16	for public inspection and copying any such rulings. The	71
17	agency shall delete trade secrets or other confidential	72
18	information from the ruling prior to publication whenever	73
19	practicable. Whenever such rulings contain any policy of	74
20	general applicability, the agency shall formulate and adopt	
21	such policy as a rule in accordance with the provisions of	75
22	Section 5 of this Act.	76

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL SEVEN

### Background and Summary pages 131-132

SYNOPSIS: (Ch. 120, pars. 1101 and 1102)

Amends the Bingo License and Tax Act. Provides that organizations do not have to obtain a bingo suppliers license to provide premises to conduct bingo to an affiliated or auxiliary organization. Changes requirement that persons managing bingo must be bona fide members of the organization to a requirement that they must have been members for at least 30 days.

LRB8201871SFmk

A BILL FOR

1 AN ACT to amend Sections 1 and 2 of the "Bingo License 55  
2 and Tax Act", approved July 22, 1971, as amended. 57

3 as enacted by the People of the State of Illinois, 61  
4 represented in the General Assembly

5 Section 1. Sections 1 and 2 of the "Bingo License and 63  
6 Tax Act", approved July 22, 1971, as amended, are amended to 64  
7 read as follows:

(Ch. 120, par. 1101) 66

8 Sec. 1. The Department of Revenue shall, upon 68  
9 application therefor on forms prescribed by such Department, 69  
10 and upon the payment of an annual fee of \$200, and upon a 70  
11 determination by the Department that the applicant meets all 71  
12 of the qualifications specified in this Section issue a 72  
13 license for the conducting of bingo to any bona fide 73  
14 religious, charitable, labor, fraternal, educational or 74  
15 veterans' organization which operates without profit to its 75  
16 members, which has been in existence continuously for a 76  
17 period of 5 years immediately before making application for a 77  
18 license and which has had during that entire 5 year period a 78  
19 bona fide membership engaged in carrying out its objects. 79  
20 However, the 5 year requirement shall be reduced to 2 years 80  
21 as applied to a local organization which is affiliated with 81  
22 and chartered by a national organization which meets the 5 82  
23 year requirement. Each license expires at midnight, June 30 83  
24 following its date of issuance. A licensee may hold only one 84  
25 license and that license is valid for only one location. 85

26 For purposes of this Act, the following definitions 86  
27 apply: Non-profit: An organization or institution organized 87  
28 and conducted on a not-for-profit basis with no personal 88  
29 profit inuring to any one as a result of the operation. 89  
30 Charitable: An organization or institution organized and 90  
31 operated to benefit an indefinite number of the public. The 91  
32 service rendered to those eligible for benefits must also 92

1 confer some benefit on the public. Educational: An 89  
 2 organization or institution organized and operated to provide 90  
 3 systematic instruction in useful branches of learning by  
 4 methods common to schools and institutions of learning which 91  
 5 compare favorably in their scope and intensity with the 92  
 6 course of study presented in tax-supported schools. 93  
 7 Religious: Any church, congregation, society, or  
 8 organization founded for the purpose of religious worship. 94  
 9 Fraternal: An organization of persons having a common 95  
 10 interest, the primary interest of which is to both promote 96  
 11 the welfare of its members and to provide assistance to the  
 12 general public in such a way as to lessen the burdens of 98  
 13 government by caring for those that otherwise would be cared  
 14 for by the government. Veterans: An organization or 99  
 15 association comprised of members of which substantially all 100  
 16 are individuals who are veterans or spouses, widows, or 101  
 17 widowers of veterans, the primary purpose of which is to  
 18 promote the welfare of its members and to provide assistance 102  
 19 to the general public in such a way as to confer a public 103  
 20 benefit. Labor: An organization composed of workers 104  
 21 organized with the objective of betterment of the conditions  
 22 of those engaged in such pursuit and the development of a 105  
 23 higher degree of efficiency in their respective occupations. 106  
 24 Licensing for the conducting of bingo is subject to the 108  
 25 following restrictions:  
 26 (1) The license application, when submitted to the 110  
 27 Department of Revenue, must contain a sworn statement 111  
 28 attesting to the not-for-profit character of the prospective 112  
 29 licensee organization, signed by the presiding officer and 113  
 30 the secretary of that organization.  
 31 (2) The application for license shall be prepared in 115  
 32 accordance with the rules of the Department of Revenue. 116  
 33 (3) Each license shall state which day of the week and 118  
 34 at what location the licensee is permitted to conduct bingo. 119  
 35 The Department may, on special application made by any 120

1 organization having a bingo license, issue a special permit 121  
 2 for conducting bingo at other premises and on other days not 122  
 3 exceeding 7 consecutive days. No more than 2 such special 123  
 4 permits may be issued in one year to any one organization. 124  
 5 Any organization, qualified for a license but not holding 125  
 6 one, upon application and payment of a \$50 fee may receive a 126  
 7 permit to conduct bingo at no more than 2 indoor or outdoor 127  
 8 festivals in a year for a maximum of 5 days on each occasion. 128  
 9 Such permit shall be prominently displayed at the site of the 129  
 10 bingo games. 130  
 11 (4) The licensee shall display the license in a 131  
 12 prominent place in the vicinity of the area where it is to 132  
 13 conduct bingo. 133  
 14 (5) The proceeds from the license fee imposed by this 134  
 15 Act shall be paid into the General Revenue Fund of the State 135  
 16 Treasury. 136  
 17 (6) A license authorizes the licensee to conduct the 137  
 18 game commonly known as bingo, in which prizes are awarded on 138  
 19 the basis of designated numbers or symbols on a card 139  
 20 conforming to numbers or symbols selected at random. 140  
 21 (7) The Director has the power to issue or, after 141  
 22 hearing, to refuse to issue a license permitting a person, 142  
 23 firm or corporation to provide premises for the conduct of 143  
 24 bingo or to sell, lease or distribute to any organization 144  
 25 duly licensed to conduct bingo games or to any duly licensed 145  
 26 bingo supplier all cards, boards, sheets, markers, balls and 146  
 27 all other supplies, devices and equipment designed for use in 147  
 28 the play of bingo. Each such license is valid for one year. 148  
 29 No person, firm or corporation shall sell, lease or 149  
 30 distribute bingo supplies or equipment or provide premises 150  
 31 for the conduct of bingo without having first obtained a 151  
 32 license therefor upon written application made, verified and 152  
 33 filed with the Department in the form prescribed by the rules 153  
 34 and regulations of the Department. The fee for such license 154  
 35 is \$200. ~~an organization which is licensed to conduct bingo~~ 155

1 or...eligible...to...conduct...bingo...which...provides 153  
 2 premises...for...the...conduct...of...bingo...at...no...cost...to...an...auxiliary 154  
 3 or...affiliated...organization...which...is...licensed...to...conduct...bingo 155  
 4 shall...not...be...required...to...obtain...this...license. A person, firm 156  
 5 or corporation holding such license may receive reasonable 157  
 6 expenses for providing premises for the conducting of bingo. 158  
 7 Reasonable expenses shall include amounts reflecting the cost 159  
 8 of purchasing or leasing the premises, cost of capital, 160  
 9 utilities, janitorial services, furniture and other equipment 161  
 10 and other items necessary or convenient to the use of 162  
 11 premises for bingo. 163  
 12 The following are ineligible for any license under this 164  
 13 Act: 165  
 14 (a) any person who has been convicted of a felony; 166  
 15 (b) any person who is or has been a professional gambler 167  
 16 or gambling promoter; 168  
 17 (c) any person who is not of good moral character; 169  
 18 (d) any firm or corporation in which a person defined in 170  
 19 (a), (b) or (c) has a proprietary, equitable or credit 171  
 20 interest, or in which such a person is active or employed; 172  
 21 (e) any organization in which a person defined in (a), 173  
 22 (b) or (c) is an officer, director, or employee, whether 174  
 23 compensated or not; 175  
 24 (f) any organization in which a person defined in (a), 176  
 25 (b) or (c) is to participate in the management or operation 177  
 26 of a bingo game. 178  
 (Ch. 120, par. 1102) 179  
 27 Sec. 2. The conducting of bingo is subject to the 180  
 28 following restrictions: 181  
 29 (1) The entire net proceeds of any game must be 182  
 30 exclusively devoted to the lawful purposes of the 183  
 31 organization permitted to conduct that game. 184  
 32 (2) No person except a... 185  
 33 member of the sponsoring organization... 186  
 34 may participate in the management or operation of the game. 187

1	(3) No person may receive any remuneration or profit for	194
2	participating in the management or operation of the game.	195
3	(4) The aggregate retail value of all prizes or	197
4	merchandise awarded in any single day of bingo may not exceed	198
5	\$3,400. The prize awarded for any one game may not exceed	199
6	\$500 cash or its equivalent.	
7	(5) The number of games may not exceed 25 in any one day	201
8	including regular and special games.	202
9	(6) The price paid for a single card under the license	204
10	may not exceed \$1 and such card is valid for all regular	205
11	games on that day of bingo. A maximum of 5 special games may	206
12	be held on each bingo day. The price for a single special	207
13	game card may not exceed 50 cents and such card is valid for	208
14	all special games on that day of bingo.	
15	(7) The number of bingo days conducted by a licensee	210
16	under this Act is limited to one per week, except as provided	211
17	by special permit issued pursuant to paragraph (3) of Section	212
18	1 of this Act.	
19	(8) A licensee may rent a premises on which to conduct	214
20	bingo only from an organization which is also licensed under	215
21	this Act.	
22	(9) No person under the age of 18 years may play or	217
23	participate in the conducting of bingo. Any person under the	218
24	age of 18 years may be within the area where bingo is being	219
25	played only when accompanied by his parent or guardian.	221

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL EIGHT

Background and Summary  
pages 132-133

SYNOPSIS: (Ch. 127, new par. 39b19.1)

Adds Section 39b19.1 to "The Civil Administrative Code of Illinois" to require that rulings, opinions or letters regarding the applicability of statutes or rules enforced by the Department of Revenue be made public and when generally applicable, such rulings, opinions or letters be adopted as a rule.

LRB8201647GLmk

Fiscal Note Act  
may be applicable

A BILL FOR

1 AN ACT to add Section 39019.1 to "The Civil 53  
2 Administrative Code of Illinois", approved March 7, 1917, as 54  
3 amended. 55

4 as amended by the People of the State of Illinois, 59  
5 as amended in the Federal Assembly:

6 Section 1. Section 39019.1 is added to "The Civil 61  
7 Administrative Code of Illinois", approved March 7, 1917, as 62  
8 amended, the added Section to read as follows:

(Ch. 127, new par. 39019.1) 64

9 Sec. 39019.1. To issue rulings, opinions or letters 65  
10 concerning the applicability to specific situations of any 67  
11 statutory provision administered or enforced by the 68  
12 department or of any rule adopted by the Department in 69  
13 response to a request for such ruling, opinion or letter by 70  
14 the person affected. Such rulings, opinions, and letters 71  
15 shall be published, maintained as a public record, and made 72  
16 available for public inspection and copying. If such ruling, 73  
17 opinion or letter contains trade secrets or other 74  
18 confidential information, where possible the Department shall 75  
19 delete such information prior to publication. Whenever such 76  
20 ruling, opinion or letter contains any policy of general 77  
21 applicability, the Department shall formulate and adopt such 78  
22 policy as a rule in accordance with the Illinois 79  
23 Administrative Procedure Act. The Department may not enforce 80  
24 any rule or policy for any purpose, any ruling, opinion or 81  
25 letter which was issued prior to the effective date of this 82  
26 Assembly Act or is subsequent to the effective date of this 83  
27 Assembly Act which was not published and made available as 84  
28 provided in this Section.

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL NINE

Background and Summary  
pages 133-134

SYNOPSIS: (Ch. 120, par. 439.3, 439.33, 439.103, 441)

Amends the occupation and use tax Acts to establish further guidelines on which food items are subject to the reduced tax rates on food items.

LRB8201870GLdh

A BILL FOR

1 AN ACT in relation to guidelines for the occupation and 47  
2 use tax rates on food. 49

3 Be it enacted by the People of the State of Illinois: 53  
4 represented in the General Assembly:

5 Section 1. Section 3 of the "Use Tax Act", approved July 55  
6 14, 1955, as amended, is amended to read as follows: 56  
(Cn. 120, par. 439.3) 58

7 Sec. 3. A tax is imposed upon the privilege of using in 50  
8 this State tangible personal property, other than farm 61  
9 chemicals and other than farm machinery and equipment costing 62  
10 \$1,000 or more both new and used and including that 63  
11 manufactured on special order, certified by the purchaser to 64  
12 be used primarily for production agriculture, including any 65  
13 individual replacement part for such machinery and equipment 66  
14 which part costs in excess of \$1,000, and including in this 67  
15 exemption such machinery and equipment purchased for lease 68  
16 and excluding from this exemption motor vehicles required to 69  
17 be registered pursuant to "The Illinois Vehicle Code", and 70  
18 other than proceeds of any mandatory service charge which is 71  
19 separately stated on customers' bills for purchase and 72  
20 consumption of food and beverages, if all of the proceeds of 73  
21 the service charge are in fact turned over to the employees 74  
22 who would normally have received tips had the service charge 75  
23 policy not been introduced, purchased at retail from a 76  
24 retailer. Such tax is at the rate of 4% of the selling price 77  
25 of such property. However with respect to gasoline, such tax 78  
26 shall be imposed at the rate of 0% up to and including June 79  
27 30, 1982, and at the rate of 1% from July 1, 1982 up to and 80  
28 including June 30, 1983, and at the rate of 2% from July 1, 81  
29 1983 up to and including June 30, 1984, and at the rate of 3% 82  
30 from July 1, 1984 up to and including June 30, 1985, and at 83  
31 the rate of 4% on July 1, 1985 and thereafter. However, with 84  
32 respect to food for human consumption which is to be consumed 85

1 off the premises where it is sold (other than alcoholic 82  
 2 beverages and food which has been prepared for immediate 83  
 3 consumption) and prescription and nonprescription medicines, 84  
 4 drugs, medical appliances and insulin, urine testing 85  
 5 materials, syringes, and needles used by diabetics, for human  
 6 use, such tax shall be imposed at the rate of 3% for sales or 86  
 7 purchases on and after January 1, 1980 and before January 1, 87  
 8 1981, and at the rate of 2% on and after January 1, 1981. 89  
 9 ~~The determination of whether the sale of a specific food item~~  
 10 ~~is eligible for the reduced tax rate under this provision~~ 90  
 11 ~~shall be based solely on whether the item is intended for~~ 91  
 12 ~~human consumption and whether the item is intended for~~ 92  
 13 ~~immediate consumption on or off the premises and not on the~~ 93  
 14 ~~type of establishment at which the sale is made. The~~ 94  
 15 ~~Department may not require the seller to physically separate~~ 95  
 16 ~~facilities for consumption on the premises from facilities~~ 96  
 17 ~~for sales of qualifying food items, or require that food~~  
 18 ~~items must be sold hot or cold, as a condition for such food~~ 97  
 19 ~~items to be eligible for the reduced tax rate under this~~ 98  
 20 ~~Section.~~ If the property that is purchased at retail from a 100  
 21 retailer is acquired outside Illinois and used outside 101  
 22 Illinois before being brought to Illinois for use here and is  
 23 nevertheless taxable hereunder, however, the "selling price" 102  
 24 on which the tax is computed shall be reduced by an amount 103  
 25 which represents a reasonable allowance for depreciation for 104  
 26 the period of such prior out-of-state use. 105  
 27 For purposes of this Section, "Production Agriculture" 107  
 28 means the raising of or the propagation of: livestock; crops 108  
 29 for sale for human consumption; crops for livestock 109  
 30 consumption; the production seed stock grown for the 110  
 31 propagation of feed grains and the husbandry of animals or,  
 32 for the purpose of providing a food product, including the 111  
 33 husbandry of blood stock as a main source of providing a food 112  
 34 product. For purposes of this Section, "Production 113  
 35 Agriculture" also means animal husbandry, floriculture,

1	horticulture and viticulture.	113
2	As used in this Section "gasohol" means motor fuel	115
3	containing at least 10% alcohol which alcohol is obtained	116
4	from agricultural products or by-products.	
5	The tax hereby imposed shall be collected from the	118
6	purchaser by a retailer maintaining a place of business in	119
7	this State or a retailer authorized by the Department	120
8	pursuant to Section 6 hereof, and remitted to the Department,	121
9	pursuant to Section 9 hereof.	
10	The tax hereby imposed and not paid to a retailer	123
11	pursuant to the preceding paragraph of this Section shall be	124
12	paid to the Department directly by any person using such	125
13	property within this State, pursuant to Section 10 hereof.	126
14	Retailers shall collect the tax from users by adding the	128
15	tax to the selling price of tangible personal property, when	129
16	sold for use, in the manner prescribed by the Department.	130
17	The Department may adopt and promulgate reasonable rules and	131
18	regulations for the adding of such tax by retailers to	132
19	selling prices by prescribing bracket systems for the purpose	133
20	of enabling such retailers to add and collect, as far as	134
21	practicable, the amount of such tax.	
22	If any seller collects use tax measured by receipts which	136
23	are not subject to use tax, or if any seller, in collecting	137
24	use tax measured by receipts which are subject to tax under	138
25	this Act, collects more from the purchaser than the amount of	139
26	the use tax on the transaction is, the purchaser shall have a	140
27	legal right to claim a refund of such amount from the seller.	141
28	However, if such amount is not refunded to the purchaser for	142
29	any reason, the seller is liable to pay such amount to the	143
30	Department. This paragraph does not apply to an amount	
31	collected by the seller as use tax on receipts which are	144
32	subject to tax under this Act as long as such collection is	145
33	made in compliance with the tax collection brackets	146
34	prescribed by the Department in its Rules and Regulations.	147
35	Provided that the exclusion as to farm machinery and	

1 equipment in this Section takes effect September 1, 1980 and 148  
 2 shall apply to the proceeds of such sales qualifying under 149  
 3 this Section according to the following schedule: (1) 50% of 150  
 4 the proceeds of such sales made from September 1, 1980,  
 5 through August 31, 1981; (2) 100% of the proceeds of such 151  
 6 sales made on and after September 1, 1981.

7 The tax herein imposed does not apply to any governmental 153  
 8 body, or to any corporation, society, association, foundation 154  
 9 or institution organized and operated exclusively for 155  
 10 charitable, religious or educational purposes or any 156  
 11 not-for-profit corporation, society, association, foundation, 157  
 12 institution or organization which has no compensated officers 158  
 13 or employees and which is organized and operated primarily 159  
 14 for the recreation of persons 55 years of age or older, when  
 15 using tangible personal property purchased at retail. 160

16 The tax imposed by this Act does not apply to the use of 162  
 17 machinery and equipment primarily in the process of the 163  
 18 manufacturing or assembling of tangible personal property for 164  
 19 wholesale or retail sale or lease, whether such sale or lease 165  
 20 is made directly by the manufacturer or by some other person, 166  
 21 whether the materials used in the process are owned by the 167  
 22 manufacturer or some other person, or whether such sale or 168  
 23 lease is made apart from or as an incident to the seller's  
 24 engaging in the service occupation of producing machines, 169  
 25 tools, dies, jigs, patterns, gauges or other similar items of 170  
 26 no commercial value on special order for a particular 171  
 27 purchaser. This exemption includes machinery and equipment 172  
 28 which replaces machinery and equipment in an existing 173  
 29 manufacturing facility as well as machinery and equipment  
 30 which is for use in an expanded or new manufacturing 174  
 31 facility. For the purposes of this exemption, each of these 175  
 32 terms shall have the following meanings: (1) "manufacturing 176  
 33 process" shall mean the production of any article of tangible 177  
 34 personal property, whether such article is a finished product 178  
 35 or an article for use in the process of manufacturing or 179

1 assembling a different article of tangible personal property, 179  
 2 by procedures commonly regarded as manufacturing, processing, 180  
 3 fabricating, or refining which changes some existing material 181  
 4 or materials into a material with a different form, use or 182  
 5 name. In relation to a recognized integrated business 183  
 6 composed of a series of operations which collectively 184  
 7 constitute manufacturing, or individually constitute 185  
 8 manufacturing operations, the manufacturing process shall be  
 9 deemed to commence with the first operation or stage of 186  
 10 production in the series, and shall not be deemed to end 187  
 11 until the completion of the final product in the last 188  
 12 operation or stage of production in the series; (2) 189  
 13 "assembling process" shall mean the production of any article  
 14 of tangible personal property, whether such article is a 190  
 15 finished product or an article for use in the process of 191  
 16 manufacturing or assembling a different article of tangible 192  
 17 personal property, by the combination of existing materials 193  
 18 in a manner commonly regarded as assembling which results in 194  
 19 a material of a different form, use or name; (3) "machinery"  
 20 shall mean major mechanical machines or major components of 195  
 21 such machines contributing to a manufacturing or assembling 196  
 22 process; and (4) "equipment" shall include any independent 197  
 23 device or tool separate from any machinery but essential to 198  
 24 an integrated manufacturing or assembly process; or any 199  
 25 subunit or assembly comprising a component of any machinery 200  
 26 or auxiliary, adjunct or attachment parts of machinery, such  
 27 as tools, dies, jigs, fixtures, patterns and molds, but shall 201  
 28 not include parts which require periodic replacement in the 202  
 29 course of normal operation, nor hand tools. This exemption 203  
 30 also includes the sale of materials to a purchaser who 204  
 31 produces exempted types of machinery or equipment or tools 205  
 32 and who rents or leases such machinery or equipment or tools 206  
 33 to a manufacturer of tangible personal property. This 207  
 34 exemption also includes the sale of materials to a purchaser  
 35 who manufactures such materials into an exempted type of 208

1 machinery or equipment or tools which such purchaser uses 209  
 2 himself in the manufacturing of tangible personal property. 210  
 3 This exemption includes the sale of exempted types of 211  
 4 machinery or equipment to a purchaser who is not the 212  
 5 manufacturer, but who rents or leases the use of such 213  
 6 property to a manufacturer: Provided that this paragraph of  
 7 this Section takes effect January 1, 1979, and shall apply to 214  
 8 the proceeds of such sales qualifying under this Section 215  
 9 according to the following schedule: (1) 31.25% of the 216  
 10 proceeds of such sales made from January 1, 1979, through 217  
 11 December 31, 1979; (2) 31.25% of the proceeds of such sales 218  
 12 made from January 1, 1980, through December 31, 1980; (3)  
 13 56.25% of the proceeds of such sales made from January 1, 219  
 14 1981, through December 31, 1981; (4) 81.25% of the proceeds 220  
 15 of such sales made from January 1, 1982, through December 31, 221  
 16 1982; (5) 93.75% of the proceeds of such sales made from 222  
 17 January 1, 1983, through December 31, 1983; and (5) 100% of 223  
 18 the proceeds of such sales made after December 31, 1983. The 224  
 19 user of such machinery and equipment and tools must furnish  
 20 to the Department a certificate of exemption in the form 225  
 21 prescribed by the Department setting forth such facts as may 226  
 22 be necessary to support the exemption. Such certificates 227  
 23 shall be submitted to the Department on a quarterly basis. 228  
 24 The Department may not require duplicate submissions of such 229  
 25 certificates, nor a separate certification of the exempt  
 26 nature of a transaction from the seller, but shall provide by 230  
 27 rule for a coordinated system for quarterly submission of 231  
 28 such certificates under this Act and the other State use and 232  
 29 occupation tax acts.  
 30 Such certificate of exemption shall also set forth the 234  
 31 number of workers who are laid off or otherwise terminated, 235  
 32 who are retained as employees, and who are newly employed as 236  
 33 a direct result of the acquisition of the exempt machinery 237  
 34 and equipment for which the exemption is claimed and the 238  
 35 Department shall compile this information and make it 239

1	available to the public on a quarterly basis.	239
2	Any informal rulings, opinions or letters issued by the	241
3	Department in response to an inquiry or request for any	242
4	opinion from any person regarding the coverage and	243
5	applicability of this exemption to specific devices shall be	244
6	published, maintained as a public record, and made available	245
7	for public inspection and copying. If the informal ruling,	
8	opinion or letter contains trade secrets or other	246
9	confidential information, where possible the Department shall	247
10	delete such information prior to publication. Whenever such	248
11	informal rulings, opinions, or letters contain any policy of	249
12	general applicability, the Department shall formulate and	250
13	adopt such policy as a rule in accordance with the provisions	251
14	of the Illinois Administrative Procedure Act.	
15	To prevent actual or likely multistate taxation, the tax	253
16	margin imposed does not apply to the use of tangible personal	254
17	property in this State under the following circumstances:	255
18	(a) The use, in this State, of tangible personal	257
19	property acquired outside this State by a nonresident	258
20	individual and brought into this State by such individual for	259
21	his or her own use while temporarily within this State or	260
22	while passing through this State;	
23	(b) the use, in this State, of tangible personal	262
24	property by an interstate carrier for hire as rolling stock	263
25	moving in interstate commerce or by lessors under a lease of	264
26	one year or longer executed or in effect at the time of	265
27	purchase of tangible personal property to interstate carriers	266
28	for-hire for use as rolling stock moving in interstate	267
29	commerce as long as so used by such interstate carriers	268
30	for-hire;	
31	(c) the use, in this State, of tangible personal	270
32	property which is acquired outside this State and caused to	271
33	be brought into this State by a person who has already paid a	272
34	tax in another State in respect to the sale, purchase or use	273
35	of such property, to the extent of the amount of such tax so	274

1 paid in such other State; 274

2 (d) the temporary storage, in this State, of tangible 275

3 personal property which is acquired outside this State and 277

4 which, subsequent to being brought into this State and stored 278

5 here temporarily, is used solely outside this State or is 279

6 physically attached to or incorporated into other tangible 280

7 personal property that is used solely outside this State, or 281

8 is altered by converting, fabricating, manufacturing, 282

9 printing, processing or shaping, and, as altered, is used

10 solely outside this State; 283

11 (e) the temporary storage in this State of building 285

12 materials and fixtures which are acquired either in this 286

13 State or outside this State by an Illinois registered 287

14 combination retailer and construction contractor, and which 288

15 such purchaser thereafter uses outside this State by 289

16 incorporating such property into real estate located outside

17 this State; 290

18 (f) the use, in this State, of a motor vehicle which was 292

19 sold in this State to a nonresident, even though said motor 293

20 vehicle is delivered to said nonresident in this State, if 294

21 said motor vehicle is not to be titled in this State, and if 295

22 a driveway decal permit is issued to said motor vehicle as 296

23 provided in Section 3-603 of the Illinois Vehicle Code. The 297

24 issuance of the driveway decal permit shall be prima facie

25 evidence that said motor vehicle will not be titled in this 298

26 State.

27 If the seller of tangible personal property for use would 300

28 not be taxable under the Retailers' Occupation Tax Act 301

29 despite all elements of the sale occurring in Illinois, then 302

30 the tax imposed by this Act shall not apply to the use of 303

31 such tangible personal property in this State.

32 The tax imposed by this Act does not apply to the use, in 305

33 this State, of tangible personal property which is acquired 306

34 outside this State by a nonresident individual who then 307

35 brings the property to this State for use here and who has 308

1	used the property outside this State for at least 3 months	309
2	before bringing the property to this State.	
3	where a business that is not operated in Illinois, but	311
4	which does operate in another State, is moved to Illinois or	312
5	opens up an office, plant or other business facility in	313
6	Illinois, such business shall not be taxed on its use, in	314
7	Illinois, of used tangible personal property which such	315
8	business bought outside Illinois and used outside Illinois in	
9	the operation of such business for at least 3 months before	315
10	moving such used property to Illinois for use here.	317
11	"Acquired outside this State", whenever used in this	319
12	Section, in addition to its usual and popular meaning,	320
13	includes the delivery, outside Illinois, of tangible personal	321
14	property that is purchased in this State and delivered from a	322
15	point in this State to the point of delivery outside this	323
16	State.	
17	The tax that is imposed by this Act also does not apply	325
18	in a transaction in which the purchase order is received by a	326
19	florist who is located outside Illinois, but who has a	327
20	florist located in Illinois deliver the property to the	328
21	purchaser or the purchaser's donee in Illinois.	331
22	Section 2. Section 3 of the "Service Use Tax Act",	
23	approved July 10, 1961, as amended, is amended to read as	332
24	follows:	
	(Ch. 120, par. 439.33)	334
25	Sec. 3. A tax is imposed upon the privilege of using in	335
26	this State real or tangible personal property, other than	338
27	farm machinery and equipment costing \$1,000 or more both new	
28	and used and including that manufactured on special order,	339
29	certified by the purchaser to be used primarily for	340
30	production agriculture, including any individual replacement	341
31	part for such machinery and equipment which part costs in	
32	excess of \$1,000, and including in this exemption such	342
33	machinery and equipment purchased for lease and excluding	343
34	from this exemption motor vehicles required to be registered	344

1 pursuant to "The Illinois Vehicle Code", and other than the 345  
2 proceeds of any mandatory service charge which is separately 346  
3 stated on customers' bills for purchase and consumption of 347  
4 food and beverages, if all of the proceeds of the service 348  
5 charge are in fact turned over to the employees who would 349  
6 normally have received tips had the service charge policy not  
7 been introduced, acquired as an incident to the purchase of 350  
8 a service from a serviceman. Such tax is at the rate of 4% of 351  
9 the cost price to the serviceman of property transferred as 352  
10 an incident to the sale of service. However with respect to 353  
11 gasoline, such tax shall be imposed at the rate of 3% up to 354  
12 and including June 30, 1982, and at the rate of 1% from July  
13 1, 1982 up to and including June 30, 1983, and at the rate of 355  
14 2% from July 1, 1983 up to and including June 30, 1984, and 356  
15 at the rate of 3% from July 1, 1984 up to and including June 357  
16 30, 1985, and at the rate of 4% on July 1, 1985 and 358  
17 thereafter. However, with respect to food for human 359  
18 consumption which is to be consumed off the premises where it 360  
19 is sold (other than alcoholic beverages and food which has 361  
20 been prepared for immediate consumption) and prescription and 362  
21 nonprescription medicines, drugs, medical appliances and 363  
22 insulin, urine testing materials, syringes, and needles used 364  
23 by diabetics, for human use, such tax shall be imposed at the  
24 rate of 3% for sales or purchases on and after January 1, 365  
25 1980 and before January 1, 1981, and at the rate of 2% on and 366  
26 after January 1, 1981. The determination of whether the sale 367  
27 of a specific food item is eligible for the reduced tax rate 368  
28 under this provision shall be based solely on whether the 369  
29 item is intended for human consumption and whether the item 370  
30 is intended for immediate consumption on or off the premises 371  
31 and not on the type of establishment at which the sale is 372  
32 made. The Department may not require the seller to 373  
33 physically separate facilities for consumption on the 374  
34 premises from facilities for sales of qualifying food items. 375  
35 or require that food items not be sold on or sold as a

1 ~~condition for such food items to be eligible for the reduced~~ 375  
2 ~~tax rate under this Section.~~ In the absence of proof to the 378  
3 contrary, it shall be assumed, when the user is paying the 379  
4 tax that is imposed by this Act directly to the Department,  
5 that the "cost price" to the serviceman is equal to 50% of 380  
6 the "selling price" to the user. 381

7 For purposes of this Section, "Production Agriculture" 383  
8 means the raising of or the propagation of: livestock; crops 384  
9 for sale for human consumption; crops for livestock 385  
10 consumption; the production seed stock grown for the 386  
11 propagation of feed grains and the husbandry of animals or,  
12 for the purpose of providing a food product, including the 387  
13 husbandry of blood stock as a main source of providing a food 388  
14 product. For purposes of this Section, "Production 389  
15 Agriculture" also means animal husbandry, floriculture,  
16 horticulture and viticulture.

17 As used in this Section "gasanol" means motor fuel 391  
18 containing at least 10% alcohol which alcohol is obtained 392  
19 from agricultural products or by-products.

20 If the property that is acquired from a serviceman is 394  
21 acquired outside Illinois and used outside Illinois before 395  
22 being brought to Illinois for use here and is nevertheless 396  
23 taxable hereunder, the "cost price" on which the tax is 397  
24 computed shall be reduced by an amount which represents a 398  
25 reasonable allowance for depreciation for the period of such 399  
26 prior out-of-State use.

27 The tax hereby imposed shall be collected at the time of 401  
28 purchase in the manner prescribed by the Department from the 402  
29 user by a serviceman maintaining a place of business in this 403  
30 State or a serviceman authorized by the Department pursuant 404  
31 to Section 7 hereof, and such tax shall be remitted to the 405  
32 Department pursuant to Section 9 hereof.

33 The tax hereby imposed and not paid to a serviceman 407  
34 pursuant to the preceding paragraph of this Section shall be 408  
35 paid to the Department directly by any person using such 409

1 property within this State in accordance with Section 10 410  
2 hereof.

3 If any serviceman collects Service Use Tax measured by 412  
4 receipts or cost prices which are not subject to Service Use 413  
5 Tax, or if any serviceman, in collecting Service Use Tax 414  
6 measured by receipts or cost prices which are subject to tax 415  
7 under this Act, collects more from the purchaser than the 416  
8 amount of the Service Use Tax on the transaction is, the 417  
9 purchaser shall have a legal right to claim a refund of such  
10 amount from such serviceman. However, if such amount is not 418  
11 refunded to the purchaser for any reason, the serviceman is 419  
12 liable to pay such amount to the Department. This paragraph 420  
13 does not apply to an amount collected by the serviceman as 421  
14 Service Use Tax on receipts or cost prices which are subject 422  
15 to tax under this Act as long as such collection is made in  
16 compliance with the tax collection brackets prescribed by the 423  
17 Department in its Rules and Regulations. 424

18 To prevent actual or likely multistate taxation, the tax 425  
19 herein imposed does not apply to the use of tangible personal 427  
20 property in this State under the following circumstances: 428

21 (a) The use, in this State, of property acquired outside 430  
22 this State by a nonresident individual and brought into this 431  
23 State by such individual for his or her own use while 432  
24 temporarily within this State or while passing through this 433  
25 State;

26 (b) the use in this State, of property which is acquired 435  
27 outside this State and which is moved into this State for use 436  
28 as rolling stock moving in interstate commerce; 437

29 (c) the use, in this State, of property which is 439  
30 acquired outside this State and caused to be brought into 440  
31 this State by a person who has already paid a tax in another 441  
32 state in respect to the sale, purchase or use of such 442  
33 property, to the extent of the amount of such tax so paid in  
34 such other state; 443

35 (d) the temporary storage, in this State, of property 445

1 which is acquired outside this State and which, subsequent to 445  
2 being brought into this State and stored here temporarily, is 447  
3 used solely outside this State or is physically attached to 448  
4 or incorporated into other property that is used solely 449  
5 outside this State, or is altered by converting, fabricating, 450  
6 manufacturing, printing, processing or shaping, and, as 451  
7 altered, is used solely outside this State.

8 If the serviceman would not be taxable under the "Service 453  
9 Occupation Tax Act" despite all elements of his sale of 454  
10 service occurring in Illinois, then the tax imposed by this 455  
11 Act does not apply to the use in this State of the property 456  
12 transferred as a necessary incident to the sale of service. 457

13 The tax imposed by this Act does not apply to the use, in 459  
14 this State, of property which is acquired outside this State 460  
15 by a nonresident individual who then brings the property to 461  
16 this State for use here, and who has used the property 462  
17 outside this State for at least 3 months before bringing the 463  
18 property to this State. Provided that the exclusion as to 464  
19 farm machinery and equipment in this Section takes effect 465  
20 September 1, 1980 and shall apply to the proceeds of such 466  
21 sales qualifying under this Section according to the 467  
22 following schedule: (1) 50% of the proceeds of such sales 468  
23 made from September 1, 1980, through August 31, 1981; (2)  
24 100% of the proceeds of such sales made on and after  
25 September 1, 1981.

26 where a business that is not operated in Illinois, but 470  
27 which does operate in another state, is moved to Illinois or 471  
28 opens up an office, plant or other business facility in 472  
29 Illinois, such business shall not be taxed on its use, in 473  
30 Illinois, of used property which such business bought outside 474  
31 Illinois and used outside Illinois in the operation of such 475  
32 business for at least 3 months before moving such used  
33 property to Illinois for use here. 476

34 Section 3. Section 3 of the "Service Occupation Tax 477  
35 Act", approved July 10, 1961, as amended, is amended to read 479

1	as follows:	480
	(Ch. 120, par. 439-103)	482
2	Sec. 3. A tax is imposed upon all persons engaged in the	484
3	business of making sales of service (hereinafter referred to	485
4	as servicemen) at the rate of 4% of the cost price of all	485
5	tangible personal property, except for farm machinery and	487
6	equipment costing \$1,000 or more both new and used and	488
7	including that manufactured on special order, certified by	
8	the purchaser to be used primarily for production	489
9	agriculture, including any individual replacement part for	490
10	such machinery and equipment which part costs in excess of	491
11	\$1,000, and including in this exemption such machinery and	
12	equipment purchased for lease and excluding from this	492
13	exemption motor vehicles required to be registered pursuant	493
14	to "The Illinois Vehicle Code", the proceeds of any mandatory	494
15	service charge which is separately stated on customers' bills	495
16	for purchase and consumption of food and beverages, if all of	495
17	the proceeds of the service charge are in fact turned over to	497
18	the employees who would normally have received tips had the	498
19	service charge policy not been introduced, transferred by	
20	said servicemen either in the form of tangible personal	499
21	property or in the form of real estate as an incident to a	500
22	"sale of service". However with respect to gasoline, such tax	501
23	shall be imposed at the rate of 0% up to and including June	502
24	30, 1982, and at the rate of 1% from July 1, 1982 up to and	503
25	including June 30, 1983, and at the rate of 2% from July 1,	504
26	1983 up to and including June 30, 1984, and at the rate of 3%	
27	from July 1, 1984 up to and including June 30, 1985, and at	505
28	the rate of 4% on July 1, 1985 and thereafter. However, with	507
29	respect to food for human consumption which is to be consumed	508
30	off the premises where it is sold (other than alcoholic	509
31	beverages and food which has been prepared for immediate	510
32	consumption) and prescription and nonprescription medicines,	511
33	drugs, medical appliances and insulin, urine testing	512
34	materials, syringes, and needles used by diabetics, for human	

1 use, such tax shall be imposed at the rate of 3% for sales or 531  
 2 purchases on and after January 1, 1980 and before January 1, 532  
 3 1981, and at the rate of 2% on and after January 1, 1981. 534  
 4 The determination of whether the sale of a specific food item  
 5 is eligible for the reduced tax rate under this provision 535  
 6 shall be based solely on whether the item is intended for 536  
 7 human consumption and whether the item is intended for 537  
 8 immediate consumption on or off the premises and on the 538  
 9 type of establishment at which the sale is made. The 539  
 10 Department may also require the seller to physically separate 540  
 11 facilities for consumption on the premises from facilities 541  
 12 for sales of qualifying food items, or require that food  
 13 items must be sold hot or cold as a condition for such food 542  
 14 items to be eligible for the reduced tax rate under this 543  
 15 Section.

16 For purposes of this Section, "Production Agriculture" 545  
 17 means the raising of or the propagation of: livestock; crops 546  
 18 for sale for human consumption; crops for livestock 547  
 19 consumption; the production seed stock grown for the 548  
 20 propagation of feed grains and the husbandry of animals or,  
 21 for the purpose of providing a food product, including the 549  
 22 husbandry of blood stock as a main source of providing a food 550  
 23 product. For purposes of this Section, "Production 551  
 24 Agriculture" also means animal husbandry, floriculture,  
 25 horticulture and viticulture.

26 As used in this Section "gasohol" means motor fuel 553  
 27 containing at least 10% alcohol which alcohol is obtained 554  
 28 from agricultural products or by-products.

29 However, such tax is not imposed upon the privilege of 556  
 30 engaging in any business in interstate commerce or otherwise, 557  
 31 which business may not, under the Constitution and statutes 558  
 32 of the United States, be made the subject of taxation by this 559  
 33 State. Provided that the exclusion as to farm machinery and 560  
 34 equipment in this Section takes effect September 1, 1980 and 561  
 35 shall apply to the proceeds of such sales qualifying under 562

1 this Section according to the following schedule: (1) 50% of 563  
2 the proceeds of such sales made from September 1, 1980, 564  
3 through August 31, 1981; (2) 100% of the proceeds of such 565  
4 sales made on and after September 1, 1981.

5 If, at the time of his purchase of tangible personal 566  
6 property from his supplier, the serviceman intends to resell 567  
7 the property as an incident to a sale of service taxable 568  
8 under this Act, the tax hereby imposed shall be collected 569  
9 from the serviceman by a supplier maintaining a place of 570  
10 business in this State or a supplier authorized by the 571  
11 Department pursuant to Section 6 hereof to act as a tax  
12 collector under this Act, and such tax shall be remitted to 572  
13 the Department pursuant to Section 9 hereof. 573

14 The tax hereby imposed and not paid to a supplier 575  
15 pursuant to the preceding paragraph of this Section shall be 576  
16 paid to the Department directly by any serviceman 577  
17 transferring such property as an incident to a sale of 578  
18 service taxable under this Act.

19 If the serviceman expects, at the time of his purchase of 580  
20 tangible personal property from his supplier, to transfer the 581  
21 tangible personal property to his customer as an incident to 582  
22 his sale of service in interstate commerce or to resell such 583  
23 property in such a manner that he will incur retailers' 584  
24 occupation tax liability or be required to collect use tax, 585  
25 or to resell such property to another purchaser for resale, 586  
26 he may give to his supplier an exemption certificate to that 587  
27 effect, but no such certificate is valid unless the 588  
28 serviceman who signs it has an active registration or resale 589  
29 number from the Department and includes that number in the 590  
30 certificate. Such exemption certificate (if given and 591  
31 accepted in good faith) shall relieve the supplier of any 592  
32 liability to collect the tax from the serviceman with respect 593  
33 to such tangible personal property and shall make the 594  
34 serviceman liable to pay the tax imposed by this Act directly  
35 to the Department if he transfers the property as an incident

1 to a sale of service taxable under this Act, or to collect 595  
 2 such tax from his purchaser upon selling such property to a  
 3 serviceman for resale as an incident to a sale of service. 596  
 4 When a supplier sells tangible personal property to a 598  
 5 serviceman who will transfer some, but not all, of such 599  
 6 property as an incident to a sale of service taxable under 600  
 7 this Act, so that it is impracticable for such serviceman, at 601  
 8 the time of purchasing any given quantity of such tangible 602  
 9 personal property to determine how he will dispose of such 603  
 10 property, such serviceman shall be permitted to give such  
 11 supplier a certification that none of such property is being 604  
 12 purchased for the purpose of transfer as an incident to a 605  
 13 sale of service taxable under this Act, but no such 606  
 14 certificate is valid unless the serviceman who signs it has 607  
 15 an active registration or resale number from the Department  
 16 and includes such number in such certificate. Such 608  
 17 certification from the serviceman in question (if given and 609  
 18 accepted in good faith) shall relieve such supplier of his 610  
 19 obligation to collect any tax under this Act with respect to 611  
 20 the sale of the property covered by such certification and 612  
 21 shall make the serviceman liable to pay the tax imposed by 613  
 22 this Act directly to the Department if he transfers the 614  
 23 property as an incident to a sale of service taxable under  
 24 this Act, or to collect such tax from his purchaser upon 615  
 25 selling such property to a serviceman for resale as an 616  
 26 incident to a sale of service.  
 27 Suppliers, when required by this Act to collect the tax 618  
 28 from servicemen, shall do so by adding the tax to the selling 619  
 29 price of tangible personal property in the manner prescribed 620  
 30 by the Department. The Department may adopt and promulgate 621  
 31 reasonable rules and regulations for the adding of such tax 622  
 32 by suppliers to selling prices by prescribing bracket systems 623  
 33 for the purpose of enabling such suppliers to add and 624  
 34 collect, as far as is practicable, the amount of such tax.  
 35 wherever possible, the tax imposed by this Act shall, 625

1 when collected, be stated as a distinct item separate and 627  
2 apart from the cost price of the tangible personal property. 628  
3 If any supplier collects Service Occupation Tax measured 630  
4 by receipts which are not subject to Service Occupation Tax, 631  
5 or if any supplier, in collecting Service Occupation Tax 632  
6 measured by receipts which are subject to tax under this Act, 633  
7 collects more from the purchaser than the amount of the 634  
8 Service Occupation Tax on the transaction is, the purchaser  
9 shall have a legal right to claim a refund of such amount 635  
10 from such supplier. If any serviceman collects an amount 636  
11 (however designated) which purports to reimburse such 637  
12 serviceman for Service Occupation Tax liability measured by 638  
13 receipts or cost prices which are not subject to Service 639  
14 Occupation Tax, or if any serviceman, in collecting an amount  
15 (however designated) which purports to reimburse such 640  
16 serviceman for Service Occupation Tax liability measured by 641  
17 receipts or cost prices which are subject to tax under this 642  
18 Act, collects more from the purchaser than the serviceman's 643  
19 Service Occupation Tax liability in the transaction is, the  
20 purchaser shall have a legal right to claim a refund of such 644  
21 amount from such serviceman. However, if any such amount is 645  
22 not refunded to the purchaser by a supplier or serviceman, as 646  
23 the case may be, for any reason, such supplier or serviceman 647  
24 is liable to pay such amount to the Department. This 648  
25 paragraph does not apply to an amount collected by the 649  
26 supplier as Service Occupation Tax, nor to an amount  
27 collected by the serviceman as reimbursement for the 650  
28 serviceman's Service Occupation Tax liability, on receipts or 651  
29 cost prices which are subject to tax under this Act, as long 652  
30 as such collection is made in compliance with the tax 653  
31 collection brackets prescribed by the Department in its Rules  
32 and Regulations. 655  
33 Section 4. Section 2 of the "Retailers' Occupation Tax 657  
34 Act", approved June 28, 1933, as amended, is amended to read 658  
35 as follows:

(Ch. 120, par. 441) 660

1       Sec. 2. A tax is imposed upon persons engaged in the 662

2       business of selling tangible personal property at retail at 663

3       the rate of 4% of the gross receipts from such sales of 664

4       tangible personal property made in the course of such 665

5       business, excluding, however, from those gross receipts, (a) 666

6       the proceeds of sales of farm chemicals, and (3-1) Farm 668

7       machinery and equipment costing \$1,000 or more, both new and 669

8       used, and including that manufactured on special order, 670

9       certified by the purchaser to be used primarily for 671

10       production agriculture, including any individual replacement 672

11       part for such machinery and equipment which part costs in 673

12       excess of \$1,000, and including in this exemption such 674

13       machinery and equipment purchased for lease and excluding 675

14       from this exemption motor vehicles required to be registered 676

15       pursuant to "The Illinois Vehicle Code"; (b) the proceeds of 677

16       such sales to any governmental body, or to any corporation, 678

17       society, association, foundation, or institution organized 679

18       and operated exclusively for charitable, religious or 680

19       educational purposes or any not-for-profit corporation, 681

20       society, association, foundation, institution or organization 682

21       which has no compensated officers or employees and which is 683

22       organized and operated primarily for the recreation of 684

23       persons 55 years of age or older, (c) the proceeds from sales 685

24       of tangible personal property to interstate carriers for hire 686

25       for use as rolling stock moving in interstate commerce or 687

26       lessors under leases of one year or longer executed or in 688

27       effect at the time of purchase to interstate carriers for 689

28       hire for use as rolling stock moving in interstate commerce, 690

29       (d) the proceeds from the sale of machinery and equipment 691

30       which will be used by the purchaser, or a lessee of the 692

31       purchaser, primarily in the process of manufacturing or 693

32       assembling tangible personal property for wholesale or retail 694

33       sale or lease, whether such sale or lease is made directly by 695

34       the manufacturer or by some other person, whether the 696

1 materials used in the process are owned by the manufacturer 693  
2 or some other person, or whether such sale or lease is made 694  
3 apart from or as an incident to the seller's engaging in the 695  
4 service occupation of producing machines, tools, dies, jigs,  
5 patterns, gauges or other similar items of no commercial 696  
6 value on special order for a particular purchaser, and (e) 697  
7 the proceeds of any mandatory service charge which is 698  
8 separately stated on customers' bills for purchase and 699  
9 consumption of food and beverages, if all of the proceeds of  
10 the service charge are in fact turned over to the employees 700  
11 who would normally have received tips had the service charge 701  
12 policy not been introduced. Exemption (d) includes machinery 702  
13 and equipment which replaces machinery and equipment in an 703  
14 existing manufacturing facility as well as machinery and 704  
15 equipment which is for use in an expanded or new  
16 manufacturing facility. For purposes of exemption (a-1), 705  
17 "Production Agriculture" means the raising of or the 706  
18 propagation of: livestock; crops for sale for human  
19 consumption; crops for livestock consumption; the production 707  
20 seed stock grown for the propagation of feed grains and the 708  
21 husbandry of animals or, for the purpose of providing a food 709  
22 product, including the husbandry of blood stock as a main  
23 source of providing a food product. For purposes of exemption 710  
24 (a-1), "Production Agriculture" also means animal husbandry, 711  
25 floriculture, horticulture and viticulture. For the purposes 712  
26 of exemption (d), each of these terms shall have the  
27 following meanings: (1) "manufacturing process" shall mean 713  
28 the production of any article of tangible personal property, 714  
29 whether such article is a finished product or an article for 715  
30 use in the process of manufacturing or assembling a different 716  
31 article of tangible personal property, by procedures commonly 717  
32 regarded as manufacturing, processing, fabricating, or 718  
33 refining which changes some existing material or materials 719  
34 into a material with a different form, use or name. In 720  
35 relation to a recognized integrated business composed of a 721

1 series of operations which collectively constitute 720  
 2 manufacturing, or individually constitute manufacturing 721  
 3 operations, the manufacturing process shall be deemed to 722  
 4 commence with the first operation or stage of production in  
 5 the series, and shall not be deemed to end until the 723  
 6 completion of the final product in the last operation or 724  
 7 stage of production in the series; (2) "assembling process" 725  
 8 shall mean the production of any article of tangible personal 726  
 9 property, whether such article is a finished product or an 727  
 10 article for use in the process of manufacturing or assembling 728  
 11 a different article of tangible personal property, by the  
 12 combination of existing materials in a manner commonly 729  
 13 regarded as assembling which results in a material of a 730  
 14 different form, use or name; (3) "machinery" shall mean major 731  
 15 mechanical machines or major components of such machines 732  
 16 contributing to a manufacturing or assembling process; and  
 17 (4) "equipment" shall include any independent device or tool 733  
 18 separate from any machinery but essential to an integrated 734  
 19 manufacturing or assembly process; or any subunit or assembly 735  
 20 comprising a component of any machinery or auxiliary, adjunct 736  
 21 or attachment parts of machinery, such as tools, dies, jigs,  
 22 fixtures, patterns and molds, but shall not include parts 737  
 23 which require periodic replacement in the course of normal 738  
 24 operation, nor hand tools. Exemption (d) also includes the 739  
 25 sale of materials to a purchaser who produces exempted types  
 26 of machinery or equipment or tools and who rents or leases 740  
 27 such machinery or equipment or tools to a manufacturer of 741  
 28 tangible personal property. Exemption (d) also includes the 742  
 29 sale of materials to a purchaser who manufactures such 743  
 30 materials into an exempted type of machinery or equipment or 744  
 31 tools which such purchaser uses himself in the manufacturing 745  
 32 of tangible personal property. Provided that exemption (d) 746  
 33 in this Section takes effect January 1, 1979 and shall apply 747  
 34 to the proceeds of such sales qualifying under this Section  
 35 according to the following schedule: (1) 31.25% of the 748

1 proceeds of such sales made from January 1, 1979, through 749  
 2 December 31, 1979; (2) 31.25% of the proceeds of such sales 750  
 3 made from January 1, 1980, through December 31, 1980, (3) 751  
 4 56.25% of the proceeds of such sales made from January 1, 752  
 5 1981, through December 31, 1981; (4) 81.25% of the proceeds  
 6 of such sales made from January 1, 1982, through December 31, 753  
 7 1982; (5) 93.75% of the proceeds of such sales made from 754  
 8 January 1, 1983, through December 31, 1983; and (6) 100% of 755  
 9 the proceeds of such sales made after December 31, 1983. The 756  
 10 seller of such machinery and equipment and tools must furnish 757  
 11 to the Department a certificate of exemption from the  
 12 purchaser in the form prescribed by the Department setting 758  
 13 forth such facts as may be necessary to support the 759  
 14 exemption. Such certificates shall be submitted to the 760  
 15 Department on a quarterly basis. The Department may not 761  
 16 require duplicate submissions of such certificates, nor a 762  
 17 separate certification of the exempt nature of a transaction  
 18 from the seller, but shall provide by rule for a coordinated 763  
 19 system for quarterly submission of such certificates under 764  
 20 this Act and the other State use and occupation tax acts. 766  
 21 Provided that the exclusion in paragraph (a-1) of this  
 22 Section takes effect September 1, 1980, and shall apply to 767  
 23 the proceeds of such sales qualifying under paragraph (a-1) 768  
 24 of this Section according to the following schedule: (1) 50% 769  
 25 of the proceeds of such sales made from September 1, 1980, 770  
 26 through August 31, 1981; (2) 100% of the proceeds of such 771  
 27 sales made on and after September 1, 1981.  
 28 Such certificate of exemption shall also set forth the 773  
 29 number of workers who are laid off or otherwise terminated, 774  
 30 who are retained as employees, and who are newly employed as 775  
 31 a direct result of the acquisition of the exempt machinery 776  
 32 and equipment for which the exemption is claimed and the 777  
 33 Department shall compile this information and make it  
 34 available to the public on a quarterly basis. 778  
 35 Any informal rulings, opinions or letters issued by the 780

1 Department in response to an inquiry or request for any 781  
 2 opinion from any person regarding the coverage and 782  
 3 applicability of this exemption to specific devices shall be  
 4 published, maintained as a public record, and made available 783  
 5 for public inspection and copying. If the informal ruling, 784  
 6 opinion or letter contains trade secrets or other 785  
 7 confidential information, where possible the Department shall  
 8 delete such information prior to publication. Whenever such 786  
 9 informal rulings, opinions, or letters contain any policy of 787  
 10 general applicability, the Department shall formulate and 788  
 11 adopt such policy as a rule in accordance with the provisions  
 12 of the Illinois Administrative Procedure Act. However with 790  
 13 respect to gasoline, such tax shall be imposed at the rate of  
 14 0% up to and including June 30, 1982, and at the rate of 1% 791  
 15 from July 1, 1982 up to and including June 30, 1983, and at 792  
 16 the rate of 2% from July 1, 1983 up to and including June 30, 793  
 17 1984, and at the rate of 3% from July 1, 1984 up to and 794  
 18 including June 30, 1985, and at the rate of 4% on July 1, 795  
 19 1985 and thereafter.

20 As used in this Section "gasoline" means motor fuel 797  
 21 containing at least 10% alcohol which alcohol is obtained 798  
 22 from agricultural products or by-products.

23 However, with respect to food for human consumption which 801  
 24 is to be consumed off the premises where it is sold (other  
 25 than alcoholic beverages and food which has been prepared for 802  
 26 immediate consumption) and prescription and nonprescription 803  
 27 medicines, drugs, medical appliances and insulin, urine 804  
 28 testing materials, syringes, and needles used by diabetics,  
 29 for human use, such tax shall be imposed at the rate of 3% 805  
 30 for sales or purchases on and after January 1, 1980 and 807  
 31 before January 1, 1981, and at the rate of 2% on and after 808  
 32 January 1, 1981. ~~The determination of whether the sale of a~~  
 33 ~~specific food item is eligible for the reduced tax rate under~~ 809  
 34 ~~this provision shall be based solely on whether the item is~~ 810  
 35 ~~intended for human consumption and whether the item is~~ 811

intended for immediate consumption on or off the premises and 812  
 not on the type of establishment at which the sale is made. 813  
 The Department may not require the seller to physically 814  
 separate facilities for consumption on the premises from 815  
 facilities for sales of qualifying food items, or require 816  
 that food items must be sold hot or cold, as a condition for 817  
 such food items to be eligible for the reduced tax rate under 818  
 this Section.

However, such tax is not imposed upon the privilege of 820  
 engaging in any business in interstate commerce or otherwise, 821  
 which business may not, under the constitution and statutes 822  
 of the United States, be made the subject of taxation by this 823  
 State, nor is such tax imposed on a transaction in which the 824  
 purchase order is received by a florist who is located 825  
 outside Illinois, but who has a florist located in Illinois 826  
 deliver the property to the purchaser or the purchaser's 827  
 donee in Illinois, nor is such tax imposed upon sales of fuel 828  
 consumed or used in the operation of ships, barges or vessels 829  
 which are used primarily in or for the transportation of 830  
 property or the conveyance of persons for hire on rivers 831  
 bordering on this State if such fuel is delivered by the 832  
 seller to the purchaser's barge, ship or vessel while it is 833  
 afloat upon such bordering river, nor is such tax imposed 834  
 upon the sale of a motor vehicle in this State to a 835  
 nonresident even though said motor vehicle is delivered to 836  
 said nonresident in this State, if said motor vehicle is not 837  
 to be titled in this State, and if a driveway decal permit 838  
 is issued to said motor vehicle as provided in Section 3-503 839  
 of the Illinois Vehicle Code. The issuance of the driveway 840  
 decal permit shall be prima facie evidence that said motor 841  
 vehicle will not be titled in this State. 842

If any seller collects an amount (however designated) 843  
 which purports to reimburse such seller for retailers' 844  
 occupation tax liability measured by receipts which are not 845  
 subject to retailers' occupation tax, or if any seller, in 846

1 collecting an amount (however designated) which purports to 845  
2 reimburse such seller for retailers' occupation tax liability 846  
3 measured by receipts which are subject to tax under this Act, 847  
4 collects more from the purchaser than the seller's retailers' 848  
5 occupation tax liability on the transaction is, the purchaser 849  
6 shall have a legal right to claim a refund of such amount 850  
7 from such seller. However, if such amount is not refunded to 851  
8 the purchaser for any reason, the seller is liable to pay 852  
9 such amount to the Department. This paragraph does not apply 853  
10 to an amount collected by the seller as reimbursement for the 854  
11 seller's retailers' occupation tax liability on receipts 855  
12 which are subject to tax under this Act as long as such 856  
13 collection is made in compliance with the tax collection 857  
14 brackets prescribed by the Department in its Rules and  
15 Regulations.

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_ BY

BILL TEN

Background and Summary  
pages 134-135

SYNOPSIS: (Ch. 121 1/2, pars. 262A and 264)

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that chain referral sales techniques are unlawful and grants the Attorney General the power to adopt rules regulating the operation of buyers clubs or discount buying associations if he finds such action is necessary to protect the public from fraud and deceptive business practices.

LRB8201837RCjw

A BILL FOR

1 AN ACT to amend Sections 2A and 4 of the "Consumer Fraud 47  
2 and Deceptive Business Practices Act", approved July 24, 48  
3 1961, as amended. 49

4 Be it enacted by the People of the State of Illinois, 53  
5 represented in the General Assembly:

6 Section 1. Sections 2A and 4 of the "Consumer Fraud and 55  
7 Deceptive Business Practices Act", approved July 24, 1961, as 56  
8 amended, are amended to read as follows:

(Ch. 121 1/2, par. 262A) 58

9 Sec. 2A. The use or employment of any chain referral 60  
10 sales technique, plan, arrangement or agreement whereby the 61  
11 buyer is induced to purchase merchandise upon the seller's 62  
12 promise or representation that if buyer will furnish seller 63  
13 names of other prospective buyers of or like or identical 64  
14 merchandise that seller will contact the named prospective 65  
15 buyers and buyer will receive a reduction in the purchase 66  
16 price by means of a cash rebate, commission, credit toward 66  
17 balance due or any other consideration, ~~whether or not such~~ 67  
18 ~~which~~ rebate, commission, credit or other consideration is 68  
19 contingent upon seller's ability to sell like or identical 69  
20 merchandise to the named prospective buyers, is declared to 70  
21 be an unlawful practice within the meaning of this act. 72

(Ch. 121 1/2, par. 264) 74

22 Sec. 4. To accomplish the objectives and to carry out the 76  
23 duties prescribed by this Act, the Attorney General, in 77  
24 addition to other powers conferred upon him by this Act, may 78  
25 issue subpoenas to any person, administer an oath or 79  
26 affirmation to any person, conduct hearings in aid of any  
27 investigation or inquiry, prescribe such forms and promulgate 80  
28 such rules and regulations as may be necessary, which rules  
29 and regulations shall have the force of law. 82

30 The Attorney General may adopt rules regulating the 84  
31 operation of buyers' clubs or discount buying associations 85

1	which include citizens of the State of Illinois if he finds	91
2	that such action is necessary to protect the public from	92
3	fraud and deceptive business practices. Such rules may	
4	include financial and membership reporting requirements and	93
5	any other requirements necessary to protect the public.	94

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL ELEVEN  
(ALTERNATIVE A)

Background and Summary  
page 135

SYNOPSIS: (Ch. 111 2/3, par. 61)

Amends the public utilities act by giving the Commerce Commission the authority to regulate or prohibit smoking by persons in the facilities of or using the equipment of public utilities.

LRB8201874SCjo

A BILL FOR

1 AN ACT to amend Section 57 of "An Act concerning public 43  
2 utilities", approved June 29, 1921, as amended. 50

3 ~~As introduced by the People of the State of Illinois,~~ 54  
4 ~~represented in the General Assembly:~~

5 Section 1. Section 57 of "An Act concerning public 56  
6 utilities", approved June 29, 1921, as amended, is amended to 57  
7 read as follows:

(Ch. 111 2/3, par. 61) 59

8 Sec. 57. The Commission shall have power, after a 61  
9 hearing or without a hearing as provided in this Section and 62  
10 Section 58 of this Act, and upon its own motion, or upon 63  
11 complaint, by general or special orders, rules or 64  
12 regulations, or otherwise, to require every public utility to  
13 maintain and operate its plant, equipment or other property 65  
14 in such manner as to promote and safeguard the health and 66  
15 safety of its employees, passengers, customers, and the 67  
16 public, and to this end to prescribe, among other things, the 68  
17 installation, use, maintenance and operation of appropriate 69  
18 safety or other devices or appliances including interlocking 70  
19 and other protective devices at grade crossings or junctions, 71  
20 right of way fences, switch stands, and block or other 72  
21 systems of signaling, to establish uniform or other standards  
22 of equipment, and to require the performance of any other act 73  
23 which the health or safety of its employees, passengers, 74  
24 customers or the public may demand. ~~SUCH AUTHORITY SHALL~~ 75  
25 ~~INCLUDE THE POWER TO REQUIRE UTILITIES TO REGULATE AND TO~~ 76  
26 ~~REGULATE THE EMPLOYEES OF UTILITIES OR PUBLIC BY EMPLOYEES,~~ 77  
27 ~~WHICH ARE CUSTOMERS AND THE PUBLIC WHILE IN FACILITIES OR~~  
28 ~~USE, REGULATION, CARE OR OPERATED BY THE UTILITY. THE~~ 78  
29 Commission shall have authority to prescribe the division of 79  
30 the cost of the installation and subsequent maintenance of 80  
31 safety or other protective devices at grade crossings between  
32 the public utility, the public highway authority in interest, 81

1 and, in instances involving the use of the Grade Crossing 32  
 2 Protection Fund, the Illinois Department of Transportation. 33  
 3 A hearing shall not be required in those instances involving  
 4 the installation, use, maintenance and operation of 34  
 5 appropriate safety or protection devices at grade crossings 35  
 6 when the Commission enters an order confirming a written 36  
 7 stipulation in which the Commission, the public highway 37  
 8 authority in interest, the public utility affected, and, in  
 9 instances involving the use of the Grade Crossing Protection 38  
 10 Fund, the Illinois Department of Transportation agree on the 39  
 11 number, type, location, and division of installation and 90  
 12 subsequent maintenance costs of appropriate safety or  
 13 protective devices.  
 14 whenever it shall come to the knowledge of the Commission 92  
 15 that the equipment or appliances, or the apparatus, track, 93  
 16 bridges, trestles or other structures of any common carrier 94  
 17 are out of repair or in an unsafe condition, it shall, after 95  
 18 an investigation, give notice in writing to the common 96  
 19 carrier of the improvements and changes deemed necessary to  
 20 place the same in a safe condition, and shall recommend to 97  
 21 the common carrier that it make such repairs, changes, 98  
 22 improvements or new constructions as the Commission shall 99  
 23 deem necessary to the safety of person and property being 100  
 24 transported thereon. The Commission shall give such common 101  
 25 carrier an opportunity for a full hearing, and unless the 102  
 26 common carrier shall satisfy the Commission that no action is  
 27 required to be taken with respect to any or all of such 103  
 28 matters the Commission shall fix a time within which repairs, 104  
 29 changes, improvements or new construction deemed by it 105  
 30 necessary shall be made, by its order or supplemental orders 106  
 31 in such case, the Commission may apportion the cost of such 107  
 32 safety devices or appliances between the railroad company or 108  
 33 companies and other public utilities affected, or between 109  
 34 such company or companies and other public utilities and the 110  
 35 state, county, municipality, or other public authority in 111

1	interest. The Commission may also prescribe the rate of speed	111
2	for trains or cars passing over defective tracks, bridges,	112
3	trestles or other structures until repairs or new	113
4	construction required are made; and may, if, in its opinion,	
5	it is needful or proper, forbid the running of trains or cars	114
6	over any defective track, bridge, trestle or other structure	115
7	until the same be repaired and placed in a safe condition.	116
8	In no instance shall a grade crossing be permanently	118
9	closed without public hearing first being held and notice of	119
10	such hearing being published in an area newspaper of local	120
11	general circulation.	121

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL ELEVEN (ALTERNATIVE B)

Background and Summary  
page 135

SYNOPSIS: (Ch. 111 2/3, par. 61)

Amends the public utilities Act. Provides that the authority of the Commission to make rules requiring public utilities to maintain and operate their plants and equipment so as to promote and safeguard the health and safety of their employees and the public shall be limited to the regulation of the utilities' equipment and operation and shall not extend to the prohibition or regulation of smoking by the public in passenger train stations.

LRB82032953Cmk

A BILL FOR

1 AN ACT to amend Section 57 of "An Act concerning public 47  
2 utilities", approved June 29, 1921, as amended. 49

3 ~~Be it enacted by the People of the State of Illinois,~~ 53  
4 ~~represented in the General Assembly:~~

5 Section 1. Section 57 of "An Act concerning public 55  
6 utilities", approved June 29, 1921, as amended, is amended to 56  
7 read as follows:

(Ch. 111 2/3, par. 61) 58

8 Sec. 57. The Commission shall have power, after a 60  
9 hearing or without a hearing as provided in this Section and 61  
10 Section 58 of this Act, and upon its own motion, or upon 62  
11 complaint, by general or special orders, rules or 63  
12 regulations, or otherwise, to require every public utility to 64  
13 maintain and operate its plant, equipment or other property 65  
14 in such manner as to promote and safeguard the health and 66  
15 safety of its employees, passengers, customers, and the 67  
16 public, and to this end to prescribe, among other things, the 68  
17 installation, use, maintenance and operation of appropriate 69  
18 safety or other devices or appliances including interlocking 70  
19 and other protective devices at grade crossings or junctions, 71  
20 right of way fences, switch stands, and block or other 72  
21 systems of signaling, to establish uniform or other standards 73  
22 of equipment, and to require the performance of any other act 74  
23 which the health or safety of its employees, passengers, 75  
24 customers or the public may demand. ~~Such authority shall be~~ 76  
25 ~~limited to the regulation of the acquisition and operation of~~ 77  
26 ~~the utility, and shall not extend to the prohibition or~~ 78  
27 ~~regulation of cigarette or pipe smoking by the public in~~ 79  
28 ~~passenger train stations or stop locations not directly~~ 80  
29 ~~relating to the acquisition or operation of the utility. The~~ 81  
30 Commission shall have authority to prescribe the division or 82  
31 cost of the installation and subsequent maintenance or 83  
32 safety or other protective devices at grade crossings, junction

1	the public utility, the public highway authority in interest,	91
2	and, in instances involving the use of the Grade Crossing;	92
3	Protection Fund, the Illinois Department of Transportation.	
4	A hearing shall not be required in those instances involving;	93
5	the installation, use, maintenance and operation of	94
6	appropriate safety or protection devices at grade crossings	95
7	when the Commission enters an order confirming a written	96
8	stipulation in which the Commission, the public highway	
9	authority in interest, the public utility affected, and, in	97
10	instances involving the use of the Grade Crossing Protection	98
11	Fund, the Illinois Department of Transportation agree on the	99
12	number, type, location, and division of installation and	
13	subsequent maintenance costs of appropriate safety or	100
14	protective devices.	
15	Whenever it shall come to the knowledge of the Commission	101
16	that the equipment or appliances, or the apparatus, track,	102
17	bridges, trestles or other structures of any common carrier	103
18	are out of repair or in an unsafe condition, it shall, after	104
19	an investigation, give notice in writing to the common	105
20	carrier of the improvements and changes deemed necessary to	
21	place the same in a safe condition, and shall recommend to	106
22	the common carrier that it make such repairs, changes,	107
23	improvements or new constructions as the Commission shall	108
24	deem necessary to the safety of person and property being	109
25	transported thereon. The Commission shall give such common	110
26	carrier an opportunity for a full hearing, and unless the	111
27	common carrier shall satisfy the Commission that no action is	
28	required to be taken with respect to any or all of such	112
29	matters the Commission shall fix a time within which repairs,	113
30	changes, improvements or new construction deemed by it	114
31	necessary shall be made, by its order or supplemental orders	115
32	in such case, the Commission may apportion the cost of such	116
33	safety devices or appliances between the railroad company or	117
34	companies and other public utilities affected, or between	
35	such company or companies and other public utilities and the	118

1	State, county, municipality, or other public authority in	110
2	interest. The Commission may also prescribe the rate of speed	111
3	for trains or cars passing over defective tracks, bridges,	112
4	trestles or other structures until repairs or new	113
5	construction required are made; and may, if, in its opinion,	
6	it is needful or proper, forbid the running of trains or cars	114
7	over any defective track, bridge, trestle or other structure	115
8	until the same be repaired and placed in a safe condition.	116
9	In no instance shall a grade crossing be permanently	118
10	closed without public hearing first being held and notice of	119
11	such hearing being published in an area newspaper of local	120
12	general circulation.	121

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL TWELVE

Background and Summary  
page 136

SYNOPSIS: (Ch. 16 1/2, pars. 105 and 808-100)

Amends the Banking Act and Electronic Fund Transfer Transmission Facility Act. Provides that non-proprietary automatic teller machines must be available to other financial institutions. Grants the Commissioner of Banks and Trusts the power to require notice of deployment of a point of sale terminal be filed 30 days prior to such deployment.

LRB8201873GLcBA

A BILL FOR

1 AN ACT to amend Section 5 of the "Illinois Banking Act", 50  
 2 approved May 11, 1955, as amended, and Section 3-100 of the 51  
 3 "Electronic Fund Transfer Transmission Facility Act", 52  
 4 approved September 22, 1979. 53

5 as it enacted by the People of the State of Illinois, 57  
 6 represented in the General Assembly:

7 Section 1. Section 5 of the "Illinois Banking Act", 59  
 8 approved May 11, 1955, as amended, is amended to read as 60  
 9 follows:

(Ch. 10 1/2, par. 105) 62

10 Sec. 5. General corporate powers.) A bank organized 64  
 11 under this Act or subject thereto shall be a body corporate 65  
 12 and politic and shall, without specific mention thereof in 66  
 13 the charter, have all the powers conferred by this Act and 67  
 14 the following additional general corporate powers: 68

15 (1) To sue and be sued, complain and defend in its 70  
 16 corporate name.

17 (2) To have a corporate seal which may be altered at 72  
 18 pleasure, and to use the same by causing it or a facsimile 73  
 19 thereof to be impressed or affixed or in any manner 74  
 20 reproduced.

21 (3) To make, alter, amend and repeal by-laws, not 76  
 22 inconsistent with its charter or with law, for the 77  
 23 administration of the affairs of the corporation. 78

24 (4) To elect or appoint and remove officers and agents 80  
 25 of the bank and define their duties and fix their 81  
 26 compensation.

27 (5) To adopt and operate reasonable bonus plans, 83  
 28 profit-sharing plans, stock-bonus plans, stock-option plans, 84  
 29 pension plans and similar incentive plans for its directors, 85  
 30 officers and employees.

31 (6) To make reasonable donations for the public welfare, 87  
 32 or for charitable, scientific, religious or educational 88

1	purposes.	38
2	(7) To borrow; and to pledge its assets:	90
3	(a) To secure its borrowings;	92
4	(b) To enable it to act as agent for the sale of	94
5	obligations of the United States;	95
6	(c) To secure deposits of public money of the United	97
7	States, whenever required by the laws of the United States,	98
8	including, without being limited to, revenues and funds the	99
9	deposit of which is subject to the control or regulation of	100
10	the United States or any of its officers, agents, or	101
11	employees and Postal Savings funds;	
12	(d) To secure deposits of public money of any State or	103
13	of any political corporation or suodivision thereof;	104
14	(e) To secure deposits of money whenever required by the	105
15	National Bankruptcy Act;	107
16	(f) To qualify under Section (5) of the Trust Companies	109
17	Act, and	
18	(g) To secure trust funds commingled with the bank's	111
19	funds as required under Section (3) of the Trust Companies	112
20	Act.	
21	(8) To own, possess and carry as assets all or part of	114
22	the real estate necessary in or with which to do its banking	115
23	business, either directly or indirectly through the ownership	116
24	of all or part of the capital stock, shares or interests in	117
25	any corporation, association, trust engaged solely in holding	118
26	any part or parts or all of the bank premises, or engaged	119
27	solely in such business and in conducting a safe deposit	120
28	business in such premises or part of them.	
29	(9) To own, possess and carry as assets such other real	122
30	estate to which it may obtain title in the collection of its	123
31	debts, but title to any real estate except as herein	124
32	permitted shall not be retained by the bank, either directly	125
33	or by or through a subsidiary, as permitted by paragraph 10	126
34	of this section for a total period of more than 5 years after	127
35	acquiring title, either directly or indirectly, unless	

1 request for extension of such time shall have been submitted 123  
 2 to and approved by the Commissioner. 129

3 (10) To do any act, including the acquisition of stock, 131  
 4 necessary to obtain insurance of its deposits, or part 132  
 5 thereof, and any act necessary to obtain a guaranty in whole 133  
 6 or in part of any of its loans or investments by the United 134  
 7 States or any agency thereof, and any act necessary to sell 135  
 8 or otherwise dispose of any of its loans or investments to 136  
 9 the United States or any agency thereof, and to acquire and 137  
 10 hold membership in the Federal Reserve System.

11 (11) Notwithstanding any other provisions of this Act, 139  
 12 to do any act and to own, possess and carry as assets 140  
 13 property of such character, including stock, which is at the 141  
 14 time authorized or permitted to National Banks by an Act of 142  
 15 Congress, but subject always to the same limitations and 143  
 16 restrictions as are applicable to National Banks by the 144  
 17 pertinent Federal law.

18 (12) To own, possess and carry as assets stock of one or 146  
 19 more corporations all the stock of which (except for 147  
 20 qualifying shares of directors to the extent, if any, 148  
 21 required by applicable law) is owned by it and which is or 149  
 22 are engaged solely in one or more of the following 150  
 23 businesses:

24 (a) Holding title to and administering assets acquired 152  
 25 by the bank as a result of the collection or liquidating of, 153  
 26 loans, investments or discounts; or 154

27 (b) Holding title to and administering personal property 156  
 28 acquired by the bank, directly or indirectly through such a 157  
 29 subsidiary, for the purpose of leasing to others, provided 158  
 30 such lease or leases and the investment of the bank, directly 159  
 31 or through such subsidiary in such personal property 160  
 32 otherwise comply with Section 35.1 of this Act; or

33 (c) Carrying on or administering any of the activities 162  
 34 excepting the receipt of deposits or the payment of checks or 163  
 35 other orders for the payment of money in which the bank 164

1 engages in carrying on its general banking business; 165  
 2 provided, however, that nothing herein contained shall be 166  
 3 deemed to permit a bank organized under this Act or subject 167  
 4 hereto to do, either directly or indirectly through any such 168  
 5 subsidiary, any act including the making of any loan or 169  
 6 investment or to own, possess or carry as assets any property 170  
 7 which if done by or owned, possessed or carried by the state 171  
 8 bank would be in violation of or prohibited by any provision 172  
 9 of this Act; and without limiting the foregoing no such 173  
 10 subsidiary shall maintain in this State any office or agency 174  
 11 for the purpose of conducting any of its business at any 175  
 12 other place than a place at which the bank of which it is a 176  
 13 subsidiary would be permitted to conduct such business if 177  
 14 such business was being conducted by the bank directly rather 178  
 15 than through such subsidiary. The provisions of this 179  
 16 paragraph shall not apply to and shall not be deemed to limit 180  
 17 the powers of a state bank with respect to the ownership, 181  
 18 possession and carrying of stock which a state bank is 182  
 19 permitted to own, possess or carry under this Act. 183  
 20 (13) To accept for payment at a future date not 184  
 21 exceeding one year from the date of acceptance, drafts drawn 185  
 22 upon it by its customers; and to issue, advise or confirm 186  
 23 letters of credit authorizing the holders thereof to draw 187  
 24 drafts upon it or its correspondents. 188  
 25 (14) To own and lease personal property acquired by the 189  
 26 bank at the request of a prospective lessee and upon the 190  
 27 agreement of such person to lease such personal property 191  
 28 provided that such lease, the agreement with respect thereto 192  
 29 and the amount of the investment of the bank in such property 193  
 30 comply with Section 35.1 of this Act. 194  
 31 (15) To establish and maintain not more than 2 195  
 32 facilities for the purpose of doing business with the 196  
 33 operators of or passengers in motor vehicles or with 197  
 34 pedestrian traffic provided such facilities comply with the 198  
 35 following provisions: 199

1 (a) No facility shall be more than 3500 yards from the 196  
 2 main banking premises of the maintaining bank; and if 2 199  
 3 facilities are maintained at least one of the facilities 200  
 4 shall be 1500 feet or less from the main premises of the 201  
 5 maintaining bank, provided however, that in the case of an 202  
 6 operating facility otherwise subject to such 1500 feet  
 7 limitation, should a relocation of the main banking premises 203  
 8 of the maintaining bank under paragraph (2) of Section 17 be 204  
 9 approved, then such facility shall be 2250 feet or less from 205  
 10 the new location of the main banking premises.  
 11 (b) No facility shall be closer than 500 feet to any 207  
 12 than existing main banking premises of another bank unless: 208  
 13 (i) it is closer to the maintaining bank than to main 210  
 14 banking premises of such other banking house, or 211  
 15 (ii) it is established with the irrevocable consent of 213  
 16 such other bank, or 214  
 17 (iii) it is established and maintained by a bank which 216  
 18 is located in a city of 500,000 or more inhabitants and at 217  
 19 least some part of the main banking premises of each of 4 or 218  
 20 more banks, including the bank proposing to maintain the 219  
 21 facility, are located within the area of a circle having a 220  
 22 radius of 1500 feet from the maintaining bank, in which case 221  
 23 the maintaining bank may establish a facility anywhere in  
 24 such circle, but not closer than 500 feet from the main 222  
 25 banking premises of any bank whose main banking premises are 223  
 26 outside of such circle without the irrevocable consent of 224  
 27 such other bank; and provided that in any case where a 225  
 28 facility is established pursuant to this subparagraph (iii)  
 29 closer than 500 feet to the main banking premises of another 226  
 30 bank, no other bank whose main banking premises are within 227  
 31 such circle shall be required to obtain the consent of the 228  
 32 maintaining bank in establishing a facility closer to it than 229  
 33 500 feet.  
 34 (c) No business shall be done at a facility except 231  
 35 receiving deposits, cashing and issuing checks, drafts and 232

1 money orders, changing money and receiving payments on 233  
2 existing indebtedness.

3 (d) If the facility is for the purpose of doing business 235  
4 with the operators of or passengers in motor vehicles, it 236  
5 shall be established and maintained in or on an area of such 237  
6 size and with provisions for ingress and egress reasonably 238  
7 adequate to accommodate servicing of at least one motor 239  
8 vehicle at one time without relying on any public way, street 240  
9 or alley for such purpose, and the area necessary for that 241  
10 purpose shall not be used for any purpose other than the  
11 business of the maintaining bank permitted to be done at such 242  
12 facility by the terms hereof. However, this paragraph 15 243  
13 does not prevent the maintaining bank from doing such 244  
14 business at such facility with persons who are not operators 245  
15 of or passengers in motor vehicles nor does this paragraph 15  
16 require a bank which establishes and maintains a facility 246  
17 under this paragraph 15 for pedestrian traffic to make 247  
18 provision for ingress and egress of motor vehicles. 248

19 (e) Not more than 2 facilities shall be established or 250  
20 maintained by a bank at any one time, but facilities may be 251  
21 established and maintained under this paragraph even though 252  
22 similar facilities are maintained at or adjacent to and 253  
23 connected with the main banking premises in such place as not 254  
24 to constitute a "branch bank", "branch office" or additional  
25 office or agency as defined in Section 2 of this Act. 255

26 (f) Such facility shall not consist solely of one or 257  
27 more devices or machines. 258

28 The distance referred to in this paragraph shall be 260  
29 measured in a straight line from the nearest point of one 261  
30 premises to the nearest point of the other premises, the word 262  
31 "premises" being deemed to mean the boundaries of the real 263  
32 estate on which the facility or the maintaining bank is 264  
33 located, as the case may be, and the areas contiguous thereto 265  
34 which the bank has the exclusive right as owner or lessee to 266  
35 use or maintain for egress from or ingress to or for parking

1	in connection with the main banking house, or as the case may	257
2	be the facility permitted hereby.	264
3	(1a) To establish and maintain, other than on the main	270
4	banking premises or at facilities permitted under subsection	271
5	(15) of this Section, <del>not more than 2</del> unmanned automatic	272
6	teller machines for the purpose of doing its banking business	273
7	with persons, provided that a bank's use of such automatic	274
8	teller machines complies with the following provisions:	275
9	(a) As used in this Section, the term Automatic Teller	277
10	Machine shall include a group of one or more such machines	278
11	established by a single bank at a single location, the radius	279
12	of which shall not exceed 100 feet.	280
13	(b) A bank may use an Automatic Teller Machine to	282
14	accomplish any of the following financial transactions with	283
15	its customers:	
16	(i) receive deposits,	285
17	(ii) permit withdrawals,	287
18	(iii) accept payments on existing indebtedness to the	289
19	bank,	
20	(iv) respond to account balance inquiries,	291
21	(v) transfer funds between different accounts of the	293
22	same customer within the same bank,	294
23	(vi) check verification and/or guarantee, and	295
24	(vii) pay out cash pursuant to pre-authorized lines of	296
25	credit.	
26	(c) A bank may establish not more than 2 automatic	300
27	teller machines, each no more than 3500 yards from its main	301
28	banking premises. If one or both automatic teller machines	302
29	are established within 3500 yards of its main banking	303
30	premises, the establishing bank may allow, but is not	304
31	required to allow, customers of other banks <del>and other</del>	
32	<del>financial institutions</del> to utilize such automatic teller	306
33	machines for transactions with such other banks <del>and other</del>	
34	<del>financial institutions</del> . Such machines may be established on	308
35	a proprietary basis and identified as such. However, where	309

1 customers of other banks ~~and other financial institutions~~ 310  
 2 utilize automatic teller machines, use of such machines shall 311  
 3 be subject to the provisions of subsections (f), (g) and (i) 312  
 4 of this section.

5 (d) Either one or both of the automatic teller machines 314  
 6 authorized under subsection (c) may be established beyond the 315  
 7 limits set forth in subsection (c) of this Section, but shall 316  
 8 not be established beyond the limits set forth in subsection 317  
 9 (e).

10 (e) In addition to the automatic teller machines 319  
 11 authorized under subsection (c), commencing with the year 320  
 12 beginning January 1, 1980, a bank may establish 3 additional 321  
 13 automatic teller machines at the rate of 2 per year. Until 322  
 14 January 1, 1981, a bank may establish such machines only in 323  
 15 the county in which the main office of the establishing bank 324  
 16 is located. Of the automatic teller machines authorized by 325  
 17 this subsection (e), not more than 4 may be established in 326  
 18 counties contiguous to the county in which the main office of 327  
 19 the bank is located. If any bank shall establish in any year 328  
 20 fewer automatic teller machines than it is permitted to 329  
 21 establish under this subsection (e), it may establish such 330  
 22 automatic teller machines in any subsequent year.

23 (f) Any automatic teller machine established in 331  
 24 accordance with subsection (d) or (e) of this Section shall 332  
 25 be made available on a nondiscriminatory basis, for use by 333  
 26 the customers of any other bank ~~or other financial~~ 334  
 27 ~~institution~~ which has its main office at a geographic 335  
 28 location which would have permitted it to establish an 336  
 29 automatic teller machine at the same location within the 337  
 30 requirements of subsections (d) or (e) of this Section, and 338  
 31 for such customers' use in the conduct of transactions 339  
 32 described in subsection (b) of this Section with such other 340  
 33 bank ~~or other financial institution~~. The terms and 341  
 34 conditions of the other bank's ~~or other financial~~ 342  
 35 ~~institution's~~ use of such an automatic teller machine shall 343

1 be governed by a written agreement between the establishing 344  
 2 bank and the other bank or financial institution whose 345  
 3 customers may use such machine. The written agreement shall 346  
 4 specify all terms and conditions, and shall include 347  
 5 commercially reasonable fees and charges for the use of the 348  
 6 automatic teller machine which shall be imposed on a 349  
 7 nondiscriminatory basis, regardless of the non-establishing  
 8 bank or financial institution using the machine. A copy of 351  
 9 the written agreement shall be filed with the Commissioner by 352  
 10 the funds transfer corporation or proprietary network 353  
 11 providing service to the automatic teller machine pursuant to  
 12 subsection (i) of this Section. Such agreement shall specify 354  
 13 that in case of a dispute over the terms of the contract, the 355  
 14 parties will accept the Commissioner as final arbitrator 356  
 15 unless the aggrieved party seeks a court action. 357

16 (g) An automatic teller machine made available for use 358  
 17 pursuant to subsection (f) shall not bear the name or 359  
 18 corporate logotype of any bank establishing or using the 360  
 19 machine except that for the convenience of customers, all 361  
 20 banks and other financial institutions using such machine 362  
 21 shall be identified in alphabetical order (provided that the 363  
 22 establishing bank may be listed first) in a uniform type 364  
 23 face, size and color on or adjacent to the machine. 365

24 (h) No automatic teller machine shall be established 366  
 25 closer than 500 feet to any then existing main office of 367  
 26 another bank or financial institution unless: 368

27 (i) it is closer to the establishing bank than to the 369  
 28 main office of another bank or financial institution; or 370  
 29 (ii) it is established with the irrevocable written 371  
 30 consent of such other bank or financial institution; or 372  
 31 (iii) it is established and maintained by a bank which 373  
 32 is located in a city of 500,000 or more inhabitants and at 374  
 33 least some part of the main office of each of 4 or more banks 375  
 34 or other financial institutions, including the bank 376  
 35 establishing the automatic teller machine, are located within 377

1 the area of a circle having a radius of 1500 feet from the 383  
2 establishing bank, in which case the establishing bank may 384  
3 establish such a machine anywhere in such circle, but not 385  
4 closer than 500 feet from the main office of any bank or  
5 other financial institution whose main office is outside such 387  
6 circle without the irrevocable written consent of such bank 388  
7 or financial institution; and provided that in any case where  
8 an automatic teller machine is established pursuant to this 390  
9 subsection closer than 500 feet to the main office of any 391  
10 other bank or financial institution, no other bank or 392  
11 financial institution whose main office is within such circle 393  
12 shall be required to obtain the consent of the establishing 394  
13 bank in establishing an automatic teller machine closer to it 395  
14 than 500 feet; or

15 (iv) it is established within the central business 397  
16 district of Chicago, defined as that part of the City of 398  
17 Chicago bounded by Lake Street on the north, Van Buren Street 399  
18 on the south, Michigan Avenue on the east, and Canal Street 400  
19 on the west.

20 (i) All transactions engaged in by a customer of a 402  
21 non-establishing bank or other financial institution through 403  
22 an automatic teller machine which is being used by the 405  
23 non-establishing bank or other financial institution in  
24 accordance with subsection (f) of this Section shall be 407  
25 transmitted through a proprietary network or a transmission  
26 facility established by a funds transfer corporation, as 408  
27 defined in the "Electronic Funds Transfer Transmission  
28 Facility Act", approved September 22, 1978, as amended, or 410  
29 ~~disseminated~~ ~~transmitted~~, to the bank or banks or other 411  
30 financial institutions whose accounts are affected by the 413  
31 transactions. Automatic teller machines may not be  
32 established by a funds transfer corporation or a proprietary, 414  
33 network, but such corporation may own one or more such 415  
34 automatic teller machines and lease them to banks which may 416  
35 establish them pursuant to this Section.

1 (17) To establish and utilize point of sale terminals, 419  
 2 as defined in the "Electronic Fund Funds Transfer  
 3 Transmission Facility Act", approved September 22, 1979 420  
 4 enacted by the State General Assembly, provided that the point 422  
 5 of sale terminals are deployed and operated in accord with  
 6 the provisions of that Act. 423

7 (18) To establish and maintain temporary service 425  
 8 booths or facilities at any International Fair held in this 426  
 9 State which is approved by the United States Department of 427  
 10 Commerce, for the duration of such international fair for the 428  
 11 sole purpose of providing a convenient place for foreign 429  
 12 trade customers at such fair to exchange their home country's 430  
 13 currency into United States money or vice versa. This power 431  
 14 shall not be construed as giving the power to establish a 432  
 15 branch bank or facility where the bank may engage in ordinary  
 16 banking business or as establishing a new place or change of 433  
 17 location for the bank providing such service booth or 434  
 18 facility. 435

19 Section 2. Section 8-100 of the "Electronic Fund 437  
 20 Transfer Transmission Facility Act", approved September 22, 438  
 21 1979, is amended to read as follows:

(Ch. 16 1/2, par. 803-100) 440

22 Sec. 8-100. Notification of the deployment of a point of 442  
 23 sale terminal shall be filed with the Commissioner. ~~The~~ 443  
 24 ~~Commissioner may require such notice to be filed not more~~ 444  
 25 ~~than 30 days prior to the deployment of such terminal.~~ Such 445  
 26 notification shall be filed by the funds transfer corporation  
 27 or proprietary network which serves the terminal and shall 446  
 28 include the following:

29 (A) The location (including the name of the seller of 448  
 30 goods and services where applicable) where the machine or 449  
 31 terminal will be deployed and operated; and

32 (B) The identity of the person deploying the machine or 451  
 33 terminal; and

34 (C) Such other information as the Commissioner may 452

- |   |  |     |
|---|--|-----|
| 1 | require by rule which is necessary to accomplish the | 454 |
| 2 | purposes of this act.                                | 455 |

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL THIRTEEN

Background and Summary  
pages 136-137

SYNOPSIS: (Ch. 111, pars. 1208, 1609, 1806, 2207, 4454,  
6504 and 6908; rep. par. 4413)

Amends certain Acts regulating occupations to  
remove the requirement that the Department of Registration  
and Education set standards for preliminary education for  
entrance into professional schools.

LRB8201650EGmk

A BILL FOR

1 AN ACT to amend certain Acts regulating occupations in 50  
2 relation to preliminary education standards. 52

3 Be it enacted by the People of the State of Illinois, 56  
4 represented in the General Assembly:

5 Section 1. Section 4-a of "The Illinois Architecture 58  
6 Act", approved June 24, 1919, as amended, is amended to read 59  
7 as follows:

(Ch. 111, par. 1238) 62

8 Sec. 4-a. The Department of Registration and Education 64  
9 shall exercise, out subject to the provisions of this Act, 65  
10 the following functions, powers and duties: 66

11 (1) Conduct examinations to ascertain the qualifications 68  
12 and fitness of applicants for certificates of registration as 69  
13 registered architects, and pass upon the qualifications of 70  
14 applicants for reciprocal licenses, certificates and 71  
15 authorities;

16 (2) Prescribe rules and regulations for a method of 73  
17 examination of candidates; 74

18 (3) Prescribe rules and regulations defining what shall 76  
19 constitute a school, college or university, or department or 77  
20 a university, or other institution, reputable and in good 78  
21 standing, and to determine whether or not a school, college 79  
22 or university, or department of a university, or other 80  
23 institution is reputable and in good standing by reference to  
24 a compliance with such rules and regulations, and to 81  
25 terminate the approval of such school, college or university 82  
26 or department of a university or other institution as 83  
27 reputable and in good standing for non-compliance with such 84  
28 rules and regulations; provided that no school, college or 85  
29 university, or department of a university or other 86  
30 institution that refuses admittance to applicants solely on  
31 account of race, color, creed, sex or national origin shall 87  
32 be considered reputable and in good standing; 88

1	<del>†4†--Establish-a-standard-of-preliminary-education-deemed</del>	90
2	<del>require-to-admission-to-a-school--college--or--university,</del>	91
3	<del>and--to-require-satisfactory-proof-of-the-enforcement-of-such</del>	92
4	<del>standard-by-such-schools,-colleges-and-universities†</del>	93
5	§5† Conduct hearings on proceedings to suspend or	95
6	revoke or refuse renewal of licenses, certificates or	96
7	authorities of persons applying for registration or	97
8	registered under the provisions of this Act and to revoke,	98
9	suspend or refuse to renew such licenses or certificates or	
10	authorities;	99
11	§6† Formulate and publish rules and regulations	101
12	necessary or appropriate to carrying out the provisions of	102
13	this Act.	
14	None of the foregoing functions or duties enumerated	104
15	shall be exercised by the Department of Registration and	105
16	Education except upon the action and report in writing of the	106
17	examining Committee which shall be composed of persons	107
18	designated from time to time by the Director of Registration	108
19	and Education to take such action and to make such report for	109
20	the profession of architecture as follows:	
21	Five registered architects, one of whom shall be a member	111
22	of the architectural faculty of the University of Illinois,	112
23	and the other four of whom shall be architects, residing in	113
24	this State, who have been engaged in the practice of	114
25	Architecture at least ten years.	
26	The action or report in writing of a majority of the	116
27	Committee designated shall be sufficient authority upon which	117
28	the Director of Registration and Education may act.	118
29	In making the designation of persons to act, the Director	120
30	shall give due consideration to recommendations by members of	121
31	the profession and by organizations therein.	122
32	whenever the Director is satisfied that substantial	124
33	justice has not been done in an examination, the Director may	125
34	order re-examinations by the same or other examiners.	127
35	Section 2. Section 5 of the "Illinois Barber Law".	129

1 approved July 18, 1947, as amended, is amended to read as 130  
2 follows:

(Ch. 111, par. 1609) 132

3 Sec. 6. The Department shall exercise, but subject to 134  
4 the provisions of this Act, the following functions, powers 135  
5 and duties: (a) ascertain the qualifications and fitness of 136  
6 applicants for certificates of registration, by examination 137  
7 or otherwise, and pass upon the qualifications of applicants 138  
8 for reciprocal licenses and certificates; (b) prescribe rules 139  
9 and regulations for a method of examination of applicants; 140  
10 (c) prescribe rules and regulations defining what shall 141  
11 constitute a school or college reputable and in good standing 142  
12 by reference to a compliance with such rules and regulations: 143  
13 Provided, that no school or college that refuses admittance 144  
14 to applicants, solely on account of race, color, creed, sex 145  
15 or national origin shall be considered reputable and in good 146  
16 standing; (d) ~~establish a standard of preliminary education~~ 147  
17 ~~deemed requisite to admission to a barber school or college~~ 148  
18 ~~and to require satisfactory proof of the enforcement of such~~ 149  
19 ~~standard by said schools or colleges;~~ (e) conduct hearings on 150  
20 proceedings to revoke, suspend or refuse renewal of 151  
21 certificates of persons applying for registration or 152  
22 registered under this Act and to revoke, suspend or refuse to 153  
23 renew such certificates; and (2) ~~to~~ formulate rules and 154  
24 regulations when required in the administration of this Act; 155  
25 ~~and--to~~ The Department may conduct examinations in English 156  
26 or, may in its discretion conduct such examinations in 157  
27 Spanish if requested to do so by an applicant who gives 158  
28 sufficient notice of his or her request prior to the date of 159  
29 the examination. 160

30 Section 3. Section 4-a of "The Illinois Beauty Culture 161  
31 Act", approved June 30, 1925, as amended, is amended to read 162  
32 as follows:

(Ch. 111, par. 1606) 163

33 Sec. 4-a. The Department of Registration and Education 164

1	shall exercise, subject to the provisions of this Act, the	165
2	following functions, powers and duties:	166
3	(1) Conduct examinations to ascertain the qualifications	168
4	and fitness of applicants for certificates of registration as	169
5	registered beauty culturists and as registered teachers of	170
6	beauty culture, and pass upon the qualifications of	171
7	applicants for reciprocal licenses, certificates and	172
8	authorities. The Department may conduct examinations in	
9	English or, may in its discretion conduct such examinations	173
10	in Spanish if requested to do so by an applicant who gives	174
11	sufficient notice of his or her request prior to the date of	175
12	the examination.	
13	(2) Prescribe rules and regulations for a method of	177
14	examination of candidates.	178
15	(3) Prescribe rules and regulations defining what shall	180
16	constitute a school, college or university, or department of	181
17	a university, or other institution, reputable and in good	182
18	standing, and to determine the reputability and good standing	183
19	of a school, college or university, or department of a	184
20	university or other institution by reference to a compliance	185
21	with such rules and regulations out no school, college or	186
22	university, or department of a university or other	
23	institution that refuses admittance to applicants, solely on	187
24	account of race, color, creed, sex or national origin shall	188
25	be considered reputable and in good standing.	
26	<del>(4) Establish a standard of preliminary education</del>	190
27	<del>required to admission to a school, college or university,</del>	191
28	<del>and to require satisfactory proof of the enforcement of such</del>	192
29	<del>standard by schools, colleges and universities.</del>	193
30	(4) Conduct hearings on proceedings to suspend or	195
31	revoke or refuse renewal of licenses, certificates or	196
32	authorities of persons applying for registration or	197
33	registered under the provisions of this Act and to suspend,	198
34	revoke or refuse to renew such licenses or certificates or	199
35	authorities.	

1	§51 (5) Prescribe reasonable rules and regulations	201
2	governing the sanitary regulation and inspection of beauty	202
3	culture shops, subject to the approval of the Department of	203
4	Public Health.	
5	§51 (7) Formulate rules and regulations when required in	205
6	any Act to be administered.	206
7	None of the foregoing functions or duties enumerated in	208
8	this Section shall be exercised by the Department of	209
9	Registration and Education except upon the action and report	210
10	in writing of the Beauty Culture Committee, which shall be	211
11	composed of persons designated from time to time by the	212
12	Director of Registration and Education to take such action	213
13	and to make such report for the profession involved herein as	
14	follows:	
15	Seven practical beauty culturists, no more than 2 to be	215
16	graduates of the same school, each of whom has been for the	216
17	last 5 years preceding his or her appointment engaged in the	217
18	occupation of beauty culture in this State, and no one of	218
19	whom is a member of, or a stockholder in any school of beauty	219
20	culture, or a manufacturer, jobber or stockholder in any	220
21	factory of beauty culture articles.	
22	The action and report in writing of a majority of the	222
23	Committee designated shall be sufficient authority upon which	223
24	the Director of Registration and Education may act.	224
25	In making the designation of persons to act, the Director	226
26	shall give due consideration to recommendations by members of	227
27	the profession and by organizations therein.	228
28	Whenever the Director is satisfied that substantial	230
29	justice has not been done in an examination, the Director may	231
30	order a re-examination by the same or other examiners.	233
31	There is created in the Department the Beauty Culture	235
32	Advisory Board appointed by the Director consisting of 9	236
33	members each of which shall have the same qualifications as	237
34	the Committee members which board shall advise the Director	238
35	in all matters relating to beauty culture and make	239

1 suggestions concerning the administration of this Act. 240

2 Section 4. Section 3a of "An Act to regulate the 242

3 practice of dental surgery and dentistry in the State of 243

4 Illinois, and to repeal certain acts therein named", approved 244

5 June 11, 1909, as amended, is amended to read as follows:

(Ch. 111, par. 2207) 246

6 Sec. 3a. The Department of Registration and Education 248

7 shall exercise, but subject to the provisions of this Act, 249

8 the following functions, powers and duties: 250

9 (1) Conduct examinations to ascertain the qualifications 252

10 and fitness of applicants for dental licenses, pass upon the 253

11 qualifications of applicants for reciprocal licenses, and 254

12 issue licenses to such as are found to be fit and qualified. 255

13 (2) Prescribe rules and regulations for a method of 257

14 examination of candidates. 258

15 (3) Prescribe rules and regulations defining what shall 260

16 constitute a school, college or university or department of a 261

17 university, or other institution, reputable and in good 262

18 standing, and to determine the reputability and good standing 263

19 of a school, college or other institution reputable and in 264

20 good standing, by reference to a compliance with such rules 265

21 and regulations: provided that no school, college or 266

22 university, or department of a university or other 267

23 institution that refuses admittance to applicants solely on 268

24 account of race, color, creed, sex or national origin shall 269

25 be considered reputable and in good standing. 270

26 ~~(4) Establish a standard of preliminary education deemed~~ 272

27 ~~required for admission to a pre-professional school, college~~ 273

28 ~~or university for eligibility to dental licensure in the~~ 274

29 ~~State of Illinois and to require satisfactory proof of the~~ 275

30 ~~enforcement of such standard by said pre-professional~~ 276

31 ~~schools, colleges and universities.~~

32 (5) Conduct hearings on proceedings to revoke, 278

33 suspend, or on objection to the issuance of licenses of 279

34 persons applying for licenses or licensed under the 280

1	provisions of this Act and to refuse to issue, revoke or	290
2	suspend such licenses.	291
3	(5) Formulate rules and regulations required for the	293
4	administration of this Act.	294
5	None of the foregoing functions, powers or duties	295
6	enumerated shall be exercised by the Department of	297
7	Registration and Education except upon the action and report	296
8	in writing of the examining committee which shall be composed	299
9	of persons designated from time to time by the Director of	290
10	Registration and Education to take such action and to make	
11	such report for the profession involved herein, as follows:	291
12	Seven persons, each of whom has been a licensed	293
13	practitioner of dentistry, or dental surgery in this State	294
14	for a period of 5 years or more, and no one of whom is	295
15	employed by or an officer of any dental college, or dental	295
16	department of any institution of learning.	
17	The Committee in being under the former provisions of	298
18	this Act shall continue to act until October 15, 1959.	299
19	Commencing October 16, 1959 the Director shall appoint 1	300
20	member to a term of 1 year, 2 members to a term of 2 years, 2	301
21	members to a term of 3 years and 2 members to a term of	
22	years. Thereafter all terms shall be for 4 years.	302
23	A member may be reappointed for a successive term, but no	304
24	member shall serve more than 2 terms in his or her lifetime.	305
25	Service prior to October 15, 1959 shall not be considered.	306
26	The membership of the Committee should reasonably reflect	308
27	representation from the geographic areas and the institutions	309
28	of dental education in this state.	310
29	In making appointments to the Committee, the Director	312
30	shall give due consideration to recommendations by	313
31	organizations of the dental profession in Illinois, including	314
32	the Illinois State Dental Society, and shall promptly give	315
33	due notice to such organizations of any vacancy of membership	
34	of the Committee.	316
35	The Director may terminate the appointment of any member	318

1	for cause which in the opinion of the Director reasonably	317
2	justifies such termination.	
3	The action or report in writing of a majority of the	321
4	Committee designated shall be sufficient authority upon which	322
5	the Director of Registration and Education may act.	323
6	Whenever the Director is satisfied that substantial	325
7	justice has not been done either in an examination or in the	325
8	revocation, suspension or refusal to issue a license, the	327
9	Director may order a re-examination or re-hearing by the same	
10	or other examiners.	328
11	The department shall demand that every applicant for a	330
12	license to practice dentistry shall:	331
13	1. Be a citizen of the United States or have first	333
14	papers for naturalization.	334
15	2. Be a graduate or have 15 units of high school work in	335
16	acceptable subjects from a high or other secondary school	337
17	approved by the Department of Registration and Education.	338
18	3. Present satisfactory evidence of completion of	340
19	pre-dental and dental education under one of the following	341
20	plans:	
21	(a) Completion of a minimum of 30 semester hours of	343
22	collegiate credit in acceptable subjects from a college or	344
23	university approved by the department, and graduation from a	345
24	dental college, school or dental department of an institution	345
25	requiring 4 courses of instruction of at least 8 months each,	347
26	approved by the department.	
27	(b) Completion of a minimum of 50 semester hours of	349
28	collegiate credit in acceptable subjects from a college or	350
29	university approved by the department, and graduation from a	351
30	dental college, school, or dental department of an	352
31	institution requiring three courses of at least eight months	353
32	each, approved by the department.	
33	(c) For applicants who completed their dental education	355
34	prior to July 7, 1933, and have engaged in the practice or	356
35	the teaching of dentistry, since completing their education,	357

1	graduation from a dental college, school or dental department	353
2	of a university considered reputable by the Illinois State	354
3	board of Dental Examiners or approved by the Department of	360
4	Registration and Education at the time of such applicant's	
5	graduation.	
6	(d) For applicants who completed their dental education	362
7	after January 1, 1944, completion of a minimum of 60 semester	363
8	hours of collegiate credit in acceptable subjects from a	364
9	college or university approved by the department, and	365
10	graduation from a dental college, school, or dental	366
11	department of an institution requiring 4 courses of	
12	instruction of at least 3 months each, approved by the	367
13	department.	
14	4. Submit, for the files of the department, a recent	369
15	picture duly identified and attested.	370
16	5. Pass an examination given by the Department of	372
17	Registration and education in the theory and practice of the	373
18	science of dentistry; provided, that the department may	374
19	recognize a certificate granted by the National Board of	375
20	Dental Examiners in lieu of, or subject to, such examination	
21	as may be required. Provided, however, that nothing in this	376
22	Act shall be construed to prevent any dental school which may	377
23	desire to do so from establishing for admission a higher	378
24	standard of preliminary education than specified in this Act.	379
25	Section 5. Section 19 of the "Medical Practice Act",	381
26	approved June 30, 1923, as amended, is amended to read as	382
27	follows:	
	(Ch. 111, par. 4454)	384
28	Sec. 19. The Department shall:	385
29	1. Make rules for establishing reasonable minimum	386
30	standards of educational requirements to be observed by	389
31	medical colleges, by any professional school, college, or	390
32	institution teaching any system or method of treating human	391
33	ailments or by colleges of midwifery, and shall determine the	392
34	reputability and good standing of all schools, colleges, and	

1	institutions now, heretofore, or hereafter existing;	393
2	2. <del>require satisfactory proof whether any medical</del>	395
3	<del>college any professional school college or institution</del>	395
4	<del>teaching any system or method of treating human diseases or</del>	397
5	<del>any college of midwifery enforced at any particular time in</del>	395
6	<del>the past the standard of preliminary education required to</del>	399
7	<del>admission thereto</del>	
8	3. <del>determine the standard of literary or scientific</del>	401
9	<del>colleges high school seminary normal school</del>	402
10	<del>preparatory school graded school and the time in the</del>	403
11	<del>discharge of its duties</del>	
12	2. 4. Formulate rules and regulations required for the	405
13	administration of this Act.	403
	(Ch. 111, rep. par. 4413)	410
14	Section 5. Section 5 of the "Medical Practice Act",	412
15	approved June 30, 1923, as amended, is repealed.	413
16	Section 7. Section 3-3 of "The Illinois Structural	415
17	Engineering Act", approved June 24, 1919, as amended, is	415
18	amended to read as follows:	
	(Ch. 111, par. 6504)	413
19	Sec. 3-3. The Department of Registration and Education	420
20	shall exercise, but subject to the provisions of this Act,	421
21	the following functions, powers and duties:	422
22	(1) Conduct examinations to ascertain the qualifications	424
23	and fitness of applicants for certificates of registration as	425
24	registered structural engineers, and pass upon the	425
25	qualifications of applicants for reciprocal licenses,	427
26	certificates and authorities.	
27	(2) Prescribe rules and regulations for a method of	429
28	examination of candidates.	430
29	(3) Prescribe rules and regulations defining what shall	432
30	constitute a school, college or university or department of a	433
31	university, or other institution, reputable and in good	434
32	standing and to determine the reputability and good standing,	435
33	of a school, college or other institution reputable and in	435

1 good standing by reference to a compliance with such rules 438  
 2 and regulations; provided that no school, college or 439  
 3 university, or department of a university or other 440  
 4 institution that refuses admittance to applicants, solely on 441  
 5 account of race, color, creed, sex, religion, physical or 442  
 6 mental handicap unrelated to ability, or national origin  
 7 shall be considered reputable and in good standing.  
 8 ~~(44) Establish a standard of preliminary education deemed~~ 444  
 9  ~~requisite to admission to a school, college or university,~~ 445  
 10  ~~and to require satisfactory proof of the enforcement of such~~ 446  
 11  ~~standard by said school, colleges and universities.~~ 447  
 12 (45) Conduct hearings on proceedings to revoke or 449  
 13 refuse renewal of licenses, certificates or authorities of 450  
 14 persons applying for registration or registered under the 451  
 15 provisions of this Act and to revoke or refuse to renew such 452  
 16 licenses or certificates or authorities.  
 17 (46) Formulate rules and regulations when required in 454  
 18 any Act to be administered. 455  
 19 None of the foregoing functions, powers or duties 457  
 20 enumerated shall be exercised by the Department of 458  
 21 Registration except upon the action and report in writing of 459  
 22 the Committee designated by the Director. The committee 460  
 23 shall consist of five structural engineers, appointed by the  
 24 Director, each of whom shall be a structural engineer 461  
 25 qualified for registration under this Act with not less than 462  
 26 10 years structural engineering experience. 463  
 27 Members shall serve three year terms and until their 465  
 28 successors are appointed and qualified, except that of the 466  
 29 initial appointments, one member shall be appointed to serve 467  
 30 for one year, two shall be appointed to serve for two years 468  
 31 and two shall be appointed to serve for three years and until 469  
 32 their successors are appointed and qualified. No member  
 33 shall be reappointed to the committee for a term which would 470  
 34 cause his continuous service after January 1, 1972 on the 471  
 35 committee to be longer than six successive years. 472

1 Appointments to fill vacancies shall be made in the same 473  
 2 manner as original appointments, for the unexpired portion of  
 3 the vacated term. Initial terms shall begin upon the 474  
 4 effective date of this amendatory Act and committee members 475  
 5 in office on the effective date of this amendatory Act shall 476  
 6 be appointed to specific terms as indicated herein.

7 The action or report in writing of a majority of the 473  
 8 Committee shall be sufficient authority upon which the 479  
 9 Director of Registration and Education may act. 480

10 In making the designation of persons to act, the Director 482  
 11 shall give due consideration to recommendations by members of 483  
 12 the profession and by organizations therein. 484

13 Whenever the Director is satisfied that substantial 485  
 14 justice has not been done in an examination, the Director may 487  
 15 order a re-examination by the same or other examiners. 489

16 Section 8. Section 8 of "The Veterinary Medicine and 491  
 17 Surgery Practice Act", approved August 14, 1951, as amended, 492  
 18 is amended to read as follows:

(Ch. 111, par. 6908) 494

19 Sec. 8. The Department of Registration and Education 495  
 20 shall exercise, but subject to the provisions of this Act, 497  
 21 the following functions, powers and duties:

22 (1) Conduct examinations to ascertain the qualifications 499  
 23 and fitness of applicants for certificates of registration as 500  
 24 registered veterinarians and animal health technicians, and 501  
 25 pass upon the qualifications of applicants for reciprocal 502  
 26 licenses, certificates and authorities.

27 (2) Ascertain by examination, oral or written, that all 504  
 28 applicants are familiar with and understand the provisions of 505  
 29 the laws of Illinois and the United States and the rules and 506  
 30 regulations promulgated thereunder relating to the diseases 507  
 31 of animals and birds.

32 (3) Prescribe rules and regulations for a method of 509  
 33 examination of candidates.

34 (4) Prescribe rules and regulations defining what shall 511

1 constitute a school, college, university, department of a 512  
 2 university or other institution to determine the reputability 513  
 3 and good standing of the foregoing by reference to a 514  
 4 compliance with such rules and regulations; provided that no  
 5 school, college, university, department of a university or 515  
 6 other institution that refuses admittance to applicants, 516  
 7 solely on account of race, color, creed, sex or national 517  
 8 origin shall be considered reputable and in good standing.

9 ~~(5) Establish a standard of preliminary education deemed 519~~  
 10 ~~required for admission to a school, college, university, 520~~  
 11 ~~department of a university or other institution of veterinary 521~~  
 12 ~~medicine and surgery and to require satisfactory proof of 522~~  
 13 ~~the enforcement of such standard by such institutions.~~

14 (5) Conduct hearings on proceedings to suspend or 524  
 15 revoke or refuse renewal of licenses, certificates or 525  
 16 authorities of persons applying for registration or 526  
 17 registered under this Act and to revoke or refuse to renew 527  
 18 such licenses or certificates or authorities.

19 (6) Establish standards of continuing education when 529  
 20 such are required for license renewal. 530

21 (7) Formulate rules and regulations when required in 532  
 22 any Act to be administered. 533

23 whenever the Director is satisfied that substantial 535  
 24 justice has not been done in an examination, the Director may 536  
 25 order a re-examination by the same or other examiners. 538

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL FOURTEEN

Background and Summary  
pages 137-138

SYNOPSIS: (Ch. 127, par. 60a)

Amends The Civil Administrative Code of Illinois. Provides that the prohibition against the Department of Registration and Education acting without the action and report of the examining committees does not apply to the adoption of rules to govern the general operation of the Department under the Open Meetings Act or other Acts which authorize such rulemaking.

LRB8201793PBjo

A BILL FOR

1 AN ACT to amend Section 60a of "The Civil Administrative 51  
2 Code of Illinois", approved March 7, 1917, as amended. 53

3 ~~Be it enacted by the People of the State of Illinois,~~ 57  
4 ~~represented in the General Assembly:~~

5 Section 1. Section 60a of "The Civil Administrative Code 59  
6 of Illinois", approved March 7, 1917, as amended, is amended 60  
7 to read as follows:

(Ch. 127, par. 60a) 62

8 Sec. 60a. None of the functions, and duties enumerated 64  
9 in Section 60 of this Act shall be exercised by the 65  
10 Department of Registration and Education ~~in relation to any~~ 66  
11 ~~specific profession, trade or occupation,~~ except upon the 67  
12 action and report in writing of the appropriate committee 68  
13 where the Act to be administered provides for a committee.  
14 ~~This provision shall not limit the Department's authority to~~ 69  
15 ~~prescribe rules to govern the general operation of the~~ 70  
16 ~~Department under the Open Meetings Act or other Acts which~~ 71  
17 ~~authorize such rulemaking.~~ Examining Such committees shall be 72  
18 composed of persons designated ~~from time to time~~ by the 73  
19 Director of Registration and Education ~~as provided in this~~ 74  
20 ~~Section or in another Act~~ to take such action and to make 75  
21 such report, as provided in this Section or in the several 76  
22 laws regulating professions, trades and occupations  
23 administered by the Department. ~~Examining committees shall be~~ 77  
24 ~~appointed as follows:~~

25 The committee for the medical practitioners, and midwives 79  
26 shall be composed of 7 persons, 5 of whom shall be reputable 81  
27 physicians licensed to practice medicine and surgery in this 82  
28 State possessing the degree of doctor of medicine, one person  
29 shall be a reputable licensed physician possessing the degree 83  
30 of doctor of osteopathy, and one person shall be a reputable 84  
31 licensed physician possessing the degree of doctor of 85  
32 chiropractic. Of the 5 members holding the degree of doctor 86

1 of medicine, one shall be a full-time teacher of professional 67  
 2 rank in one of the clinical departments of the University of 88  
 3 Illinois College of Medicine. For the purpose of preparing 89  
 4 questions and rating papers on practice peculiar to any  
 5 school, graduates of which may be candidates for registration 90  
 6 or license, the director may designate additional examiners 91  
 7 whenever occasion may require. 92  
 8 The committee for persons performing weather modification 94  
 9 shall be composed of 5 residents of the State, which 96  
 10 committee shall include individuals with qualifications and  
 11 practical experience in agriculture, law, meteorology and 97  
 12 water resources. 98  
 13 The action or report in writing of a majority of the 100  
 14 committee designated for any given trade, occupation or 101  
 15 profession, shall be sufficient authority upon which the 102  
 16 Director of Registration and Education may act. 103  
 17 In making the designation of persons to act for the 105  
 18 several professions, trades and occupations, the director 106  
 19 shall give due consideration to recommendations by members of 107  
 20 the respective professions, trades and occupations and by 108  
 21 organizations therein.  
 22 whenever the director is satisfied that substantial 110  
 23 justice has not been done either in an examination or in the 111  
 24 revocation of, refusal to renew, suspension, placing on 112  
 25 probationary status, or the taking of other disciplinary 113  
 26 action as may be authorized in any licensing Act administered 114  
 27 by the Department with regard to a license, certificate or 115  
 28 authority, he may order reexaminations or rearings by the  
 29 same or other examiners. 116  
 30 From amounts appropriated for compensation and expenses 118  
 31 of examining committees each member of each such committee 120  
 32 shall receive compensation at a rate, established by the 121  
 33 director, not to exceed \$50 per day, for service in providing  
 34 for examinations, approving applications, and grading 122  
 35 examinations and shall be reimbursed for his expenses 123

- |   |  |     |
|---|--|-----|
| 1 | necessarily incurred in relation to such service in      | 124 |
| 2 | accordance with the travel regulations applicable to the | 125 |
| 3 | Department at the time the expenses are incurred.        | 125 |

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_ BY

BILL FIFTEEN

Background and Summary  
page 138

SYNOPSIS: (Ch. 111, pars. 3201 and 3206)

Amends The Illinois Land Surveyors' Act.  
Provides that a Registered Land Surveyor in Training may  
engage in land surveying under the general supervision of a  
Registered Land Surveyor, and requires an individual to be  
registered as a Land Surveyor in Training to be eligible for  
registration as a Land Surveyor.

LRB8202093SFmk

A BILL FOR

1 AN ACT to amend Sections 1 and 4 of "The Illinois Land 46  
2 Surveyors Act", approved July 29, 1939, as amended. 48

3 ~~as it enacted by the People of the State of Illinois,~~ 52  
4 ~~represented in the General Assembly:~~

5 Section 1. Sections 1 and 4 of "The Illinois Land 54  
6 Surveyors Act", approved July 29, 1939, as amended, are 55  
7 amended to read as follows:

(Ch. 111, par. 3201) 57

8 Sec. 1. It is unlawful for any person to practice or 59  
9 attempt to practice Land Surveying without a certificate of 60  
10 registration as a Registered Land Surveyor issued by the 61  
11 Department of Registration and Education, except ~~(1) with a~~ 62  
12 ~~certificate of registration as a Registered Land Surveyor in~~  
13 ~~training issued by the Department of Registration and~~ 63  
14 ~~Education and under the general supervision of a Registered~~ 64  
15 ~~Illinois Land Surveyor, or (2) under the direct supervision~~ 65  
16 ~~and control of a Registered Illinois Land Surveyor or (3) and~~ 66  
17 ~~except as provided in Section 1.1.~~ 67

(Ch. 111, par. 3206) 70

18 Sec. 4. (A) A person is qualified to receive a 72  
19 certificate of registration as a Registered Land Surveyor: 73

20 (1) who is at least 25 years of age, and 75

21 (2) who is a citizen of the United States, and 77

22 (3) who is of good moral character and temperate habits, 79

23 and

24 (4) who has graduated from a high school or secondary 81

25 school approved by the Department of Registration and 82

26 education, or who has completed an equivalent course of study 83

27 as determined by an examination conducted by the Department, 84

28 and

29 ~~(5) who is a Registered Land Surveyor in training and~~ 85

30 ~~has been engaged in the practice of land surveying under the~~ 87

31 ~~general supervision of a Registered Land Surveyor.~~ 89

1	§61 (5) who has had a total of 8 years experience in the	89
2	practice of Land Surveying at least 4 years of which he has	90
3	been in responsible charge of Land Surveying operations under	91
4	a Registered Land Surveyor. Responsible charge of land	92
5	surveying operations under this Act means the independent	93
6	control and direction of such operations but subject to the	94
7	overall supervision of a Registered Land Surveyor, and	
8	§71 (6) who has passed an examination conducted by the	96
9	Department of Registration and Education to determine his	97
10	fitness to receive a certificate of registration as a	98
11	Registered Land Surveyor.	
12	In determining moral character under this Section, the	100
13	Department may take into consideration any felony conviction	101
14	of the applicant, but such a conviction shall not operate as	102
15	a bar to registration.	
16	(8) A person is qualified to receive a certificate of	104
17	registration as a Registered Land Surveyor in Training:	105
18	(1) who is at least 21 years of age, and	107
19	(2) who is of good moral character and temperate habits,	109
20	and	
21	(3) who has graduated from a high school approved by the	111
22	Department of Registration and Education, or who has	112
23	completed an equivalent course of study as determined by an	113
24	examination conducted by the Department of Registration and	114
25	Education, and	
26	(4) who has had a total of 4 years experience in the	116
27	practice of land surveying, and	
28	(5) who has passed the prescribed portion of the	118
29	examination conducted by the Department to determine the	119
30	fitness of a Registered Land Surveyor in accordance with	120
31	Section 6 of this act.	121

# 82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

## BILL SIXTEEN

Background and Summary  
pages 138-139

**SYNOPSIS:** (Ch. 111, pars. 4410 and 6906)

Amends The Medical Practice Act and The Veterinary Medicine and Surgery Practice Act. Provides that the Department of Registration and Education may require an applicant for licensure under these Acts to submit, and may consider as evidence of moral character, endorsements from 2 or 3 presently licensed individuals.

LRB8202092JWjo

A BILL FOR

1 AN ACT to amend Section 4 of the "Medical Practice Act", 49  
 2 approved June 30, 1923, as amended, and Section 6 of "The 50  
 3 Veterinary Medicine and Surgery Practice Act", approved 51  
 4 August 14, 1961, as amended. 52

5 Be it enacted by the People of the State of Illinois, 56  
 6 represented in the General Assembly:

7 Section 1. Section 4 of the "Medical Practice Act", 58  
 8 approved June 30, 1923, as amended, is amended to read as 59  
 9 follows:

(Ch. 111, par. 4410) 61

10 Sec. 4. Each applicant for such examination shall: 64

11 1. Make application for examination on blank forms 66  
 12 prepared and furnished by the Department; 57

13 2. Submit evidence under oath satisfactory to the 69  
 14 Department that:

15 (a) He is 21 years of age or over; 71

16 (b) He is of good moral character. In determining moral 73  
 17 character under this Section, the Department may take into 74  
 18 consideration any felony conviction of the applicant, but 75  
 19 such a conviction shall not operate as a bar to registration, 76  
 20 The Department may also request the applicant to submit, and 77  
 21 may consider as evidence of moral character, endorsements 78  
 22 from 2 or 3 individuals licensed under this Act to practice  
 23 medicine in all of its branches; 79

24 (c) He has the preliminary and professional education 81  
 25 required by this Act; 82

26 (d) He is a citizen of the United States or not being a 84  
 27 citizen has filed an affidavit with the Department that he 85  
 28 will become a citizen within 5 years of the issuance of a 86  
 29 license under this Act. If a non citizen fails to perfect his 87  
 30 citizenship within 5 years of the date of issuance of a 88  
 31 license the Department shall revoke or refuse to renew his 89  
 32 license under Section 16 hereof until final citizenship has

1	been attained;	90
2	3. Designate specifically the name, location, and kind	92
3	of professional school, college, or institution of which he	93
4	is a graduate and the system or method of treatment under	94
5	which he seeks, and will undertake, to practice;	95
6	4. Pay to the Department at the time of application the	97
7	required fees.	98
8	Section 2. Section 6 of "The Veterinary Medicine and	100
9	Surgery Practice Act", approved August 14, 1961, as amended,	101
10	is amended to read as follows:	
	(Ch. 111, par. 6906)	103
11	Sec. 6. A person is qualified to receive a license (1)	105
12	who is 18 years of age or over; (2) who is of good moral	106
13	character and temperate habits; (3) who is graduated from a	107
14	high school or secondary school approved by the Department;	108
15	(4) who has received at least 2 years of pre-veterinary	109
16	collegiate training; (5) who has graduated from a veterinary	
17	school, college, university, or department of a university	110
18	that requires for graduation a 4 year or equivalent course in	111
19	veterinary medicine and surgery approved by the Department;	112
20	(6) who has passed an examination conducted by the Department	
21	to determine his fitness to receive a license.	113
22	With respect to graduates of foreign veterinary schools,	115
23	the Department may determine if such schools meet the	116
24	standards equivalent to those set forth in clauses 3, 4, and	117
25	5 above.	
26	In determining moral character under this Section, the	119
27	Department may take into consideration any felony conviction	120
28	of the applicant, but such a conviction shall not operate as	121
29	a bar to registration. <u>The Department may also request the</u>	122
30	<u>applicant to submit, and may consider as evidence of moral</u>	
31	<u>character, endorsements from 2 or 3 individuals licensed</u>	123
32	<u>under this act.</u>	
33	A student who is presently enrolled in the last half-year	125
34	of a veterinary curriculum approved by the Department and	126

1	who, based on his academic record prior to the last	127
2	half-year, will successfully complete the curriculum as	128
3	certified by the dean of the approved school of veterinary	
4	medicine may take the examination during this period. But no	129
5	license shall be issued until written certification has been	130
6	received by the Department from the dean of the approved	131
7	school of veterinary medicine that such person has	132
8	successfully completed the approved curriculum.	133

82nd GENERAL ASSEMBLY  
State of Illinois

1981 and 1982

INTRODUCED \_\_\_\_\_, BY

BILL SEVENTEEN

Background and Summary  
page 139

SYNOPSIS: (Ch. 111, pars. 1806 and 1821)

Amends An Act relating to the practice of beauty culture by eliminating the Beauty Culture Advisory Board, and transferring its functions to the Beauty Culture Committee.

LRB8201648BDtcA

*Fiscal Note Act  
may be affected*

A BILL FOR

1	AN ACT to amend Sections 4-a and 12a of "The Illinois	47
2	Beauty Culture Act", approved June 30, 1925, as amended.	49
3	<del>As it enacted by the People of the State of Illinois:</del>	53
4	<del>now presented in the General Assembly:</del>	
5	Section 1. Sections 4-a and 12a of "The Illinois Beauty	55
6	Culture Act", approved June 30, 1925, as amended, are amended	56
7	to read as follows:	
	(Ch. 111, par. 1306)	58
8	Sec. 4-a. The Department of Registration and Education	60
9	shall exercise, subject to the provisions of this Act, the	61
10	following functions, powers and duties:	62
11	(1) Conduct examinations to ascertain the qualifications	64
12	and fitness of applicants for certificates of registration as	65
13	registered beauty culturists and as registered teachers of	66
14	beauty culture, and pass upon the qualifications of	67
15	applicants for reciprocal licenses, certificates and	68
16	authorities. The Department may conduct examinations in	
17	English or, may in its discretion conduct such examinations	69
18	in Spanish if requested to do so by an applicant who gives	70
19	sufficient notice of his or her request prior to the date of	71
20	the examination.	
21	(2) Prescribe rules and regulations for a method of	73
22	examination of candidates.	74
23	(3) Prescribe rules and regulations defining what shall	75
24	constitute a school, college or university, or department of	77
25	a university, or other institution, reputable and in good	78
26	standing, and to determine the reputability and good standing	79
27	of a school, college or university, or department of a	80
28	university or other institution by reference to a compliance	81
29	with such rules and regulations but no school, college or	82
30	university, or department of a university or other	
31	institution that refuses admittance to applicants solely on	83
32	account of race, color, creed, sex or national origin shall	84

1	be considered reputable and in good standing.	84
2	(4) Establish a standard of preliminary education	85
3	requisite to admission to a school, college or university,	87
4	and to require satisfactory proof of the enforcement of such	88
5	standard by schools, colleges and universities.	89
6	(5) Conduct hearings on proceedings to suspend or revoke	91
7	or refuse renewal of licenses, certificates or authorities of	92
8	persons applying for registration or registered under the	93
9	provisions of this Act and to suspend, revoke or refuse to	94
10	renew such licenses or certificates or authorities.	95
11	(6) Prescribe reasonable rules and regulations governing	97
12	the sanitary regulation and inspection of beauty culture	98
13	shops, subject to the approval of the Department of Public	99
14	Health.	
15	(7) Formulate rules and regulations when required in any	101
16	Act to be administered.	102
17	None of the foregoing functions or duties enumerated in	104
18	this Section shall be exercised by the Department of	105
19	Registration and Education except upon the action and report	106
20	in writing of the Beauty Culture Committee, which shall be	107
21	composed of persons designated from time to time by the	108
22	Director of Registration and Education to take such action	109
23	and to make such report for the profession involved herein as	
24	follows:	
25	Seven practical beauty culturists, no more than 2 to be	111
26	graduates of the same school, each of whom has been for the	112
27	last 5 years preceding his or her appointment engaged in the	113
28	occupation of beauty culture in this State, and no one of	114
29	whom is a member of, or a stockholder in any school of beauty	115
30	culture, or a manufacturer, jobber or stockholder in any	116
31	factory of beauty culture articles.	
32	The action and report in writing of a majority of the	118
33	committee designated shall be sufficient authority upon which	119
34	the Director of Registration and Education may act.	120
35	In making the designation of persons to act, the Director	122

1	shall give due consideration to recommendations by members of	123
2	the profession and by organizations therein.	124
3	Whenever the Director is satisfied that substantial	125
4	justice has not been done in an examination, the Director may	127
5	order a re-examination by the same or other examiners.	128
6	<del>There is created in the Department the Beauty Culture</del>	130
7	<del>Advisory Board appointed by the Director consisting of</del>	131
8	<del>members each of whom shall have the same qualifications as</del>	132
9	<del>the committee members whose board shall advise the Director</del>	133
10	<del>in all matters relating to beauty culture and make</del>	134
11	<del>suggestions concerning the administration of this Act.</del>	135
	(Ch. 111, par. 1321)	137
12	Sec. 12a. A certificate of registration for a school of	139
13	beauty culture may be suspended or revoked by the Department	140
14	for any one or combination of the following causes:	141
15	(1) A finding by the <del>Beauty Culture Committee Board</del> that	143
16	any of the principals in the operation of a school of beauty	145
17	culture or teachers in a school of beauty culture are found	146
18	to be in violation of Section 12 of this Act.	
19	(2) A finding by the <del>Beauty Culture Committee Board</del> that	148
20	the school after approval by the Department has failed to	150
21	continue to meet the requirements of Section 5b of this Act.	151
22		

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## APPENDIX A

### THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(ILLINOIS REVISED STATUTES, CHAPTER 127, PARAGRAPHS 1001-1021)

AS EFFECTIVE JANUARY 1, 1981

**Section 1. SHORT TITLE)** This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083, effective September 22, 1975)

**Section 2. APPLICABILITY)** This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, (3) legal opinions issued under Section 2-3.7 of The School Code, and (4) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures and (5) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act." (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981)

**Section 3. DEFINITIONS)** As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.09 have the meanings ascribed to them in those Sections. (PA 79-1083)

**Section 3.01. AGENCY)** "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

(a) the House of Representatives and Senate, and their respective standing and service committees;

(b) the Governor; and

(c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

**Section 3.02. CONTESTED CASE)** "Contested case" means an adjudicatory proceeding, not including rate-making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 3.03. HEARING EXAMINER)** "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

**Section 3.04. LICENSE)** "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

**Section 3.05. LICENSING)** "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

**Section 3.06. PARTY)** "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

**Section 3.07. PERSON)** "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

**Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES)** "Rate-making" or "rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

**Section 3.09. RULE)** "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES)** (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)

**Section 4.01. REQUIRED RULES)** (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rule-making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

**Section 4.02. STANDARDS FOR DISCRETION)** Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 80-1129, Effective July 1, 1980)

**Section 5. PROCEDURE FOR RULE-MAKING)** (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

**Section 5.01. GENERAL RULEMAKING)** In all rulemaking to which Section 5.02 or 5.03 does not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include a text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed; the specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized; a complete description of the subjects and issues involved; and the time, place and manner in which interested persons may present their views and comments concerning the intended action.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

(b) provide up to 45 days additional notice of its intended action to the Joint Committee on Administrative Rules. The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include the text and location of any changes made to the proposed rule during the first notice period, and, if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, shall include an analysis of the economic and budgetary effects of the proposed rule. After commencement of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Joint Committee.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule. (Added by PA 81-1044, effective October 1, 1979)

**Section 5.02 EMERGENCY RULEMAKING)** "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefore shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 5.03. PEREMPTORY RULEMAKING)** "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the relevant federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. **(Added by PA 81-1044, effective October 1, 1979)**

**Section 6. FILING OF RULES)** (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it, including all rules existing on the date this Act becomes applicable to the agency other than rules already so filed. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any material pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of rulemaking which presents:

1. if the material is a new rule, the full text of the new rule; or
2. if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or
3. if the material is a repealer, such notice of repeal shall be published. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 6.01. FORM AND PUBLICATION OF NOTICES)** The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

Notwithstanding any other provision of this Act, if an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed shall

be satisfied by filing with the applicable notice a photographic or other reproduction of such rules, or a statement that the agency proposes to adopt or is adopting such rules with a citation to the Federal Register or Code of Federal Regulations where the text appears. If an agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text thereof be filed shall be satisfied by filing with the applicable notice a photographic or other reproduction of such standards or guidelines. (Added by PA 81-1044, effective October 1, 1979)

**Section 7. PUBLICATION OF RULES)** (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of the rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01(a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if

such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code on or before January 1, 1985, and shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. **(PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980)**

**Section 7.01. CERTIFICATION)** (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. **(Added by PA 80-1035, effective September 27, 1977)**

**Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES)** (a) The Joint Committee on Administrative Rules is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of same political party. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979)**

**Section 7.03. OATHS; AFFIDAVITS; SUBPOENA)** (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. **(Added by PA 80-1035, effective September 27, 1977)**

**Section 7.04. POWERS OF JOINT COMMITTEE)** The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)**

**Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE)** The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule-making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule-making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule-making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

**Section 7.06. JOINT COMMITTEE OBJECTION TO PROPOSED RULE-MAKING) (a)**

The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after notice of proposed rulemaking has been received by the Joint Committee, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 7.06a. LEGISLATIVE VETO OF PROPOSED RULEMAKING)** (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. **(Added by PA 81-1514, effective January 1, 1981)**

**Section 7.07. JOINT COMMITTEE OBJECTION TO EXISTING RULE)** (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. **(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)**

**Section 7.07a. LEGISLATIVE SUSPENSION OF EMERGENCY AND PEREMPTORY RULES)** (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this

subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. **(Added by PA 81-1514, effective January 1, 1981)**

**Section 7.08. PERIODIC EVALUATION BY JOINT COMMITTEE)** (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rule-making;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. **(Added by 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)**

**Section 7.09. JOINT COMMITTEE RULE-MAKING)** The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. **(Added by PA 80-1035, effective September 27, 1977)**

**Section 7.10. REPORT BY JOINT COMMITTEE)** The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1 of each year. (Added by PA 80-1035, effective September 27, 1977)

**Section 8. PETITION FOR ADOPTION OF RULES)** Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083)

**Section 9. DECLARATORY RULINGS BY AGENCY)** Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory rulings shall not be appealable. (PA 79-1083)

**Section 10. CONTESTED CASES; NOTICE; HEARING)** (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

**Section 11. RECORD IN CONTESTED CASES)** (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 14 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083)

**Section 12. RULES OF EVIDENCE; OFFICIAL NOTICE)** In contested cases:

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

**Section 13. PROPOSAL FOR DECISION)** Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

**Section 14. DECISIONS AND ORDERS)** A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Finding of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 15. EX PARTE CONSULTATIONS)** Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a

contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 16. LICENSES)** (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

**Section 17. RATE-MAKING)** Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

**Section 18. WAIVER)** Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

**Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)**

**Section 20. SEVERABILITY)** If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

**Section 21. EFFECTIVE DATE)** This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

1 AN ACT in relation to the publication by the Secretary of  
 2 State of an Illinois Administrative Code, containing all  
 3 rules of state agencies.

4 Be it enacted by the People of the State of Illinois,  
 5 represented in the General Assembly:

6 Section 1. Section 7 of "The Illinois Administrative  
 7 Procedure Act", approved September 22, 1975, as amended, is  
 8 amended to read as follows:

(Ch. 127, par. 1007)

9 Sec. 7. ~~Publication of Rules.---(a)---The--agency--shall~~  
 10 ~~compile--index--and--publish--all--its--rules--adopted--under--the~~  
 11 ~~provisions--of--this--Act,--and--all--rules--certified--under--the~~  
 12 ~~provisions--of--subsection--(b)--of--Section--7.01--of--this--Act. The~~  
 13 ~~initial--compilation,--index--and--publication--required--by--this~~  
 14 ~~Section--shall--contain--all--rules--in--effect--on--July--17--1980,~~  
 15 ~~and--shall--be--filed--as--provided--in--subsection--(b)--not--later~~  
 16 ~~than--October--17--1980. Thereafter,--compilations--shall--be~~  
 17 ~~supplemented--or--revised--and--certified--as--current--to--the~~  
 18 ~~Secretary--of--State--at--least--once--every--2--years.~~

19 ~~(b)---Compilations,--supplements--and--revisions--required--by~~  
 20 ~~this--Section--shall--be--filed--in--the--office--of--the--Secretary--of~~  
 21 ~~State--in--Springfield,--Illinois--and--in--the--Cook--County--Law~~  
 22 ~~Library--in--Chicago,--Illinois--and--with--the--Joint--Committee--on~~  
 23 ~~Administrative--Rules.---The--agency--shall--make--compilations,~~  
 24 ~~supplements--and--revisions--available--upon--request--to--agencies~~  
 25 ~~and--officials--of--this--State--without--charge--and--to--other~~  
 26 ~~persons--at--prices--established--by--the--agency--to--cover--mailing~~  
 27 ~~and--publication--costs.~~

28 (a) ~~(e)~~ The Secretary of State shall, by rule,  
 29 prescribe a uniform system for the codification of rules on  
 30 or before July 1, 1980. The Secretary of State shall also,  
 31 by rule, establish a schedule for compliance with the uniform  
 32 codification system on or before October 1, 1980. Such

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APPENDIX B(1): PUBLIC ACT 81-1348

1 schedule may be by sections of the codification system and  
2 shall require approximately one-fourth of the rules to be  
3 converted to the codification system by each October 1,  
4 starting in 1981 and ending in 1984. All rules on file with  
5 the Secretary of State and in effect on October 1 July-1,  
6 1984, shall be in compliance with the uniform system for the  
7 codification of rules. The Secretary of State shall not adopt  
8 any codification system or schedule under this subsection  
9 without the approval of the Joint Committee on Administrative  
10 Rules. Approval by the Joint Committee shall be conditioned  
11 solely upon establishing that the proposed codification  
12 system and schedule are is compatible with existing  
13 electronic data processing equipment and programs maintained  
14 by and for the General Assembly. Nothing in this Section  
15 shall prohibit an agency from adopting rules in compliance  
16 with the codification system earlier than specified in the  
17 schedule.

18 (b) If no substantive changes are made by the agency in  
19 amending existing rules to comply with the codification  
20 system, such codified rules may be adopted until October 1,  
21 1984, without requiring notice or publication of the text of  
22 the rules pursuant to Section 5. In such a case, the  
23 publication requirement shall be satisfied by the publication  
24 in the Illinois Register of a notice stating that the agency  
25 has adopted the rules to comply with the codification system,  
26 that no substantive changes have been made in the rules and  
27 that the State Library has reviewed and approved the  
28 codification of the rules. The notice shall include the  
29 current names and numbers of the rules being codified, an  
30 outline of the headings of the sections of the rules as  
31 codified and may also include a table indicating the  
32 relationship between any rule numbers previously used by the  
33 agency and the numbering system of the codified rules. The  
34 agency shall provide the text of such rules as codified to  
35 the State Library for review and necessary changes and

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1 recommendations at least 30 days prior to the publication of  
2 such notice. Whenever the codification of an emergency or  
3 peremptory rule is changed subsequent to its publication as  
4 adopted in the Illinois Register, a notice of such change, in  
5 the manner set forth in this subsection, shall be published  
6 in the next available issue of the Illinois Register. Such a  
7 change in the rule's codification shall not affect its  
8 validity or the date upon which it became effective.

9 (c) Each rule proposed in compliance with the  
10 codification system shall be reviewed by the State Library  
11 under the Secretary of State prior to the expiration of the  
12 public notice period provided by Section 5.01(a) of this Act  
13 or prior to the publication of the notice required under  
14 subsection (b) of this Section. The State Library shall  
15 cooperate with agencies in its review to insure that the  
16 purposes of the codification system are accomplished. The  
17 State Library shall have the authority to make changes in the  
18 numbering and location of the rule in the codification  
19 scheme, providing such changes do not affect the meaning of  
20 the rules. The State Library may recommend changes in the  
21 sectioning and headings proposed by the agency and suggest  
22 grammatical and technical changes to correct errors. The  
23 State Library may add notes concerning the statutory  
24 authority, dates proposed and adopted and other similar notes  
25 to the text of the rules, if such notes are not supplied by  
26 the agency. This review by the State Library shall be for  
27 the purpose of insuring the uniformity of and compliance with  
28 the codification system. The State Library shall prepare  
29 indexes by agency, subject matter, and statutory authority  
30 and any other necessary indexes, tables and other aids for  
31 locating rules to assist the public in the use of the Code.

32 (d) The State Library shall make available to the agency  
33 and the Joint Committee on Administrative Rules copies of the  
34 changes in the numbering and location of the rule in the  
35 codification scheme, the recommended changes in the

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1 sectioning and headings, and the suggestions made concerning  
2 the correction of grammatical and technical errors or other  
3 suggested changes. The agency shall in the notice required  
4 by Section 5.01(b) of this Act, or if such notice is not  
5 required, at least 10 days prior to the publication of the  
6 notice required under subsection (b) of this Section, provide  
7 to the Joint Committee a response to the recommendations of  
8 the State Library including any reasons for not adopting the  
9 recommendations.

10 (e) In the case of reorganization of agencies, transfer  
11 of functions between agencies, or abolishment of agencies by  
12 executive order or law, which affects rules on file with the  
13 Secretary of State, the State Library shall notify the  
14 Governor, the Attorney General, and the agencies involved of  
15 the effects upon such rules on file. If the Governor or the  
16 agencies involved do not respond to the State Library's  
17 notice within 45 days by instructing the State Library to  
18 delete or transfer the rules, the State Library may delete or  
19 place such rules under the appropriate agency for the purpose  
20 of insuring the consistency of the codification scheme and  
21 shall notify the Governor, the Attorney General and the  
22 agencies involved.

23 (f) The Secretary of State shall publish an Illinois  
24 Administrative Code on or before January 1, 1985, and shall  
25 update each section of the Code at least annually thereafter.  
26 Such Code shall contain the complete text of all rules of all  
27 State agencies filed with his office and effective on October  
28 1, 1984, or later and the indexes, tables, and other aids for  
29 locating rules prepared by the State Library. The Secretary  
30 of State shall design the Illinois Register to supplement  
31 such Code. The Secretary of State shall make copies of the  
32 Code available generally at a price covering publication and  
33 mailing costs.

34 (g) The publication of a rule in the Code or in the  
35 Illinois Register as an adopted rule shall establish a

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rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with the publication of the Illinois Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section.

Section 2. Section 5.08 is added to "AN ACT in relation to a Legislative Information System", approved September 16, 1977, as amended, the added Section to read as follows:

(Ch. 63, new par. 42.15-8)

Sec. 5.08. To maintain on its electronic data processing equipment the complete text of the rules adopted in compliance with the codification system prescribed by Section 7 of "The Illinois Administrative Procedure Act", as now or hereafter amended; to cooperate with the Secretary of State in making such computerized text available for use in publication of the Illinois Register and Illinois Administrative Code; and to periodically, until October 1, 1984, supply copies of such text to the Governor, the Secretary of State, the General Assembly and its committees and commissions, the Joint Committee on Administrative Rules, agencies of state government, and the Cook County Law Library. Equipment, programs, training and support necessary to maintain this system shall be under the control of the Legislative Information System.

Section 3. Section 7 of "The State Library Act",

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1 approved July 13, 1939, as amended, is amended to read as  
2 follows:

(Ch. 128, par. 107)

3 Sec. 7. Purpose of the State Library. The Illinois  
4 State Library shall:

5 (a) Maintain a library for State officials and employees  
6 of the State, especially of informational material pertaining  
7 to the phases of their work and to provide for them material  
8 for general reading and study.

9 (b) Establish and operate a Governmental Research  
10 Service of the Illinois State Library. This service shall  
11 make available printed and other materials that pertain to  
12 public and governmental affairs. State Officers, members of  
13 the General Assembly, members of their staffs, and other  
14 State employees shall have access to these materials.

15 (c) Maintain and provide research library services for  
16 all State agencies.

17 (d) Administer The Illinois Library System Act, as  
18 amended.

19 (e) Administer the law relating to Interstate Library  
20 Compacts.

21 (f) Function as a Research and Reference Center pursuant  
22 to The Illinois Library System Act, as amended.

23 (g) Promote and develop cooperative library network  
24 operating regionally or statewide for providing effective  
25 coordination of the library resources of public, academic,  
26 school, and special libraries, and to promote and develop  
27 information centers for improved supplemental library  
28 services for special library clientele served by each type of  
29 library or center.

30 (h) Administer grants of federal library funds pursuant  
31 to federal law and requirements.

32 (i) Be a supplementary source through the State-funded  
33 library systems for reading materials unavailable in the  
34 local libraries.

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1 (j) Assist local libraries in their plans of cooperation  
2 for better work and library services in their communities and  
3 to loan them books and other library materials through the  
4 State-funded library systems in furtherance of this object.

5 (k) Be ready to help local groups in developing a  
6 program by which library service can be arranged for in rural  
7 communities and rural schools now without such service, and  
8 to develop standards for libraries.

9 (l) Be a clearing house, in an advisory capacity, for  
10 questions and problems pertaining to the administration and  
11 functioning of public and school libraries in Illinois and to  
12 publish booklets and pamphlets to implement this service.

13 (m) To seek the opinion of the Attorney General for  
14 legal questions pertaining to public libraries and their  
15 function as governmental agencies.

16 (n) Contract with any other library or library agency to  
17 carry out the purposes of the State Library.

18 (o) Collect, compile, preserve and publish public  
19 library statistical information.

20 (p) Compile and publish the annual report of local  
21 public libraries and library systems submitted to the State  
22 Librarian pursuant to law.

23 (q) Conduct and arrange for library training programs  
24 for library personnel, library directors and others involved  
25 in library services.

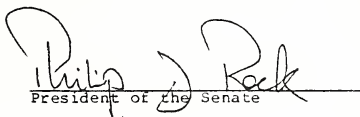
26 (r) Make and publish an annual report for each fiscal  
27 year.

28 (s) Review all rules of all State agencies adopted in  
29 compliance with the codification system prescribed by the  
30 Secretary of State. Such review shall be for the purposes  
31 and include all the powers and duties provided in Section 7  
32 of "The Illinois Administrative Procedure Act", as now or  
33 hereafter amended. The State Library shall cooperate with  
34 the Legislative Information System to insure the accuracy of  
35 the text of the rules maintained pursuant to Section 5.08 of

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1 "An Act in relation to a Legislative Information System", as  
2 now or hereafter amended.

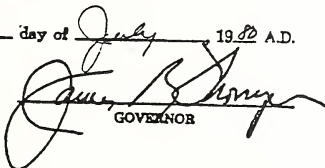
3 Section 4. This Act takes effect July 1, 1980 or when it  
4 becomes law, whichever is later.

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker, House of Representatives

**APPROVED**

this 16<sup>th</sup> day of July, 1980 A.D.

  
\_\_\_\_\_  
GOVERNOR

1        AN ACT to amend Sections 2 and 7.04 of and to add  
2        Sections 7.06a and 7.07a to "The Illinois Administrative  
3        Procedure Act", approved September 22, 1975, as amended.

4        Be it enacted by the People of the State of Illinois,  
5        represented in the General Assembly:

6        Section 1. Sections 2 and 7.04 of the "Illinois  
7        Administrative Procedure Act", approved September 22, 1975,  
8        as amended, are amended, and Sections 7.06a and 7.07a are  
9        added thereto, the amended and added Sections to read as  
10       follows:

          (Ch. 127, par. 1002)

11       Sec. 2. This Act applies to every agency as defined  
12       herein. Beginning January 1, 1978 in case of conflict  
13       between the provisions of this Act and the Act creating or  
14       conferring power on an agency, this Act shall control.  
15       However if an agency has existing procedures on July 1, 1977  
16       specifically for contested cases or licensing those existing  
17       provisions control, except that this exception respecting  
18       contested cases and licensing does not apply if the Act  
19       creating or conferring power on the agency adopts by express  
20       reference the provision of this Act. Where the Act creating  
21       or conferring power on an agency establishes administrative  
22       procedures not covered by this Act, such procedures shall  
23       remain in effect.

24       The provisions of this Act shall not apply to (1)  
25       preliminary hearings, investigations or practices where no  
26       final determinations affecting State funding are made by the  
27       State Board of Education, (2) State Board of Education  
28       statements, guidelines or policies which do not have the  
29       force of law, (3) legal opinions issued under Section 2-3.7  
30       of The School Code, and (4) as to State colleges and  
31       universities, their disciplinary and grievance proceedings,  
32       academic irregularity and capricious grading proceedings, and

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APPENDIX B(2). PUBLIC ACT 81-1514

1 admission standards and procedures, and (5) the class  
2 specifications for positions and individual position  
3 descriptions prepared and maintained pursuant to the  
4 "Personnel Code"; however such specifications shall be made  
5 reasonably available to the public for inspection and  
6 copying. Neither shall the provisions of this Act apply to  
7 hearings under Section 20 of the "Uniform Disposition of  
8 Unclaimed Property Act".

(Ch. 127, par. 1007.04)

9 Sec. 7.04. The Joint Committee shall have the following  
10 powers under this Act:

11 1. The function of the Joint Committee shall be the  
12 promotion of adequate and proper rules by agencies and an  
13 understanding on the part of the public respecting such  
14 rules. Such function shall be advisory only, except as  
15 provided in Sections 7.06a and 7.07a. ~~The--Joint--Committee~~  
16 ~~shall--have--advisory--powers--only--relating--to--its--function,~~  
17 ~~which--shall--be--the--promotion--of--adequate--and--proper--rules--by~~  
18 ~~agencies--and--an--understanding--on--the--part--of--the--public~~  
19 ~~respecting--such--rules.~~

20 2. The Joint Committee may undertake studies and  
21 investigations concerning rule-making and agency rules.

22 3. The Joint Committee shall monitor and investigate  
23 compliance of agencies with the provisions of this Act, make  
24 periodic investigations of the rule-making activities of all  
25 agencies, and evaluate and report on all rules in terms of  
26 their propriety, legal adequacy, relation to statutory  
27 authorization, economic and budgetary effects and public  
28 policy.

29 4. Hearings and investigations conducted by the Joint  
30 Committee under this Act may be held at such times and places  
31 within the State as such Committee deems necessary;

32 5. The Joint Committee shall have the authority to  
33 request from any agency an analysis of the:

34 a. effect of a new rule, amendment or repealer,  
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1 including any direct economic effect on the persons regulated  
2 by the rule; any anticipated effect on the proposing agency's  
3 budget and the budgets of other State agencies; and any  
4 anticipated effects on State revenues;

5 b. agency's evaluation of the submissions presented to  
6 the agency pursuant to Section 5.01 of this Act;

7 c. a description of any modifications from the initially  
8 published proposal made in the finally accepted version of  
9 the intended rule, amendment or repealer; and

10 d. the agency's justification and rationale for the  
11 intended rule, amendment or repealer.

12 6. Failure of the Joint Committee to object to any  
13 proposed rule, amendment, or repealer or any existing rule  
14 shall not be construed as implying direct or indirect  
15 approval of the rule or proposed rule, amendment, or repealer  
16 by the Joint Committee or the General Assembly.

(Ch. 127, new par. 1007.06a)

17 Sec. 7.06a. (a) If the Joint Committee determines that  
18 adoption and effectiveness of a proposed rule, amendment or  
19 repealer or portion of a proposed rule, amendment or repealer  
20 by an agency would be objectionable under any of the  
21 standards for the Joint Committee's review specified in  
22 Sections 7.04, 7.05, 7.07 or 7.08 of this Act and would  
23 constitute a serious threat to the public interest, safety or  
24 welfare, the Joint Committee may at any time prior to the  
25 taking effect of such proposed rule, amendment or repealer  
26 issue a statement to that effect. Such statement may be  
27 issued by the Joint Committee only upon the affirmative vote  
28 of three-fifths of the members appointed to the Joint  
29 Committee. A certified copy of such statement shall be  
30 transmitted to the proposing agency and to the Secretary of  
31 State for publication in the next available issue of the  
32 Illinois Register.

33 (b) The proposed rule, amendment or repealer or the  
34 portion of the proposed rule, amendment or repealer to which

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1 the Joint Committee has issued a statement under subsection  
2 (a) shall not be accepted for filing by the Secretary of  
3 State nor take effect for at least 180 days from receipt of  
4 the statement by the Secretary of State. The agency may not  
5 enforce or invoke for any reason a proposed rule, amendment  
6 or repealer or any portion thereof which is prohibited from  
7 being filed by this subsection during this 180 day period.

8 (c) The Joint Committee shall, as soon as practicable  
9 after the issuance of a statement under subsection (a),  
10 introduce in either house of the General Assembly a joint  
11 resolution stating that the General Assembly desires to  
12 continue the prohibition of the proposed rule, amendment or  
13 repealer or the portion thereof to which the statement was  
14 issued from being filed and taking effect. If such a joint  
15 resolution is passed by both houses of the General Assembly  
16 within the 180 day period provided in subsection (b), the  
17 agency shall be prohibited from filing the proposed rule,  
18 amendment or repealer or the portion thereof and the proposed  
19 rule, amendment or repealer or the portion thereof shall not  
20 take effect. The Secretary of State shall not accept for  
21 filing the proposed rule, amendment or repealer or the  
22 portion thereof which the General Assembly has prohibited the  
23 agency from filing as provided in this subsection. If the  
24 180 day period provided in subsection (b) expires prior to  
25 passage of the joint resolution, the agency may file the  
26 proposed rule, amendment or repealer or the portion thereof  
27 as adopted and it shall take effect.

(Ch. 127, new par. 1007.07a)

28 Sec. 7.07a. (a) If the Joint Committee determines that a  
29 rule or portion of a rule adopted under Sections 5.02 or 5.03  
30 of this Act is objectionable under any of the standards for  
31 the Joint Committee's review specified in Sections 7.04,  
32 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a  
33 serious threat to the public interest, safety or welfare, the  
34 Joint Committee may issue a statement to that effect. Such

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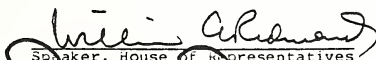
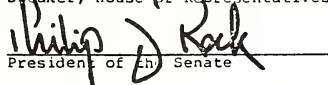
1 statement may be issued by the Joint Committee only upon the  
2 affirmative vote of three-fifths of the members appointed to  
3 the Joint Committee. A certified copy of such statement  
4 shall be transmitted to the affected agency and to the  
5 Secretary of State for publication in the next available  
6 issue of the Illinois Register.

7 (b) The effectiveness of the rule or the portion of a  
8 rule shall be suspended immediately for at least 180 days  
9 upon receipt of the certified statement by the Secretary of  
10 State. The Secretary of State shall indicate such suspension  
11 prominently and clearly on the face of the affected rule or  
12 the portion of a rule filed in the Office of the Secretary of  
13 State. Rules or portions of rules suspended in accordance  
14 with this subsection shall become effective again upon the  
15 expiration of 180 days from receipt of the statement by the  
16 Secretary of State if the General Assembly does not continue  
17 the suspension as provided in subsection (c). The agency may  
18 not enforce, nor invoke for any reason, a rule or portion of  
19 a rule which has been suspended in accordance with this  
20 subsection. During the 180 day period, the agency may not  
21 file, nor may the Secretary of State accept for filing, any  
22 rule having substantially the same purpose and effect as  
23 rules or portions of rules suspended in accordance with this  
24 subsection.

25 (c) The Joint Committee shall, as soon as practicable  
26 after issuance of a statement under subsection (a), cause to  
27 be introduced in either house of the General Assembly a joint  
28 resolution stating that the General Assembly desires to  
29 continue the suspension of effectiveness of a rule or the  
30 portion of the rule to which the statement was issued. If  
31 such a joint resolution is passed by both houses of the  
32 General Assembly within the 180 day period provided in  
33 subsection (b), the rule or the portion of the rule shall be  
34 considered repealed and the Secretary of State shall  
35 immediately remove such rule or portion of a rule from the

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- 1 collection of effective rules.

  
Speaker, House of Representatives  
  
President of the Senate

Returned on the 15<sup>th</sup> day of September, 1980,  
with specific recommendations for change by message  
of the Governor as filed with the Secy of State.

APPENDIX C  
OPERATIONAL RULES OF THE JOINT COMMITTEE  
AS EFFECTIVE JANUARY 1, 1981

TITLE 1: GENERAL PROVISIONS

CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

**PART 210**

**GENERAL POLICIES**

Section 210.1	Definitions
Section 210.2	Committee Function
Section 210.3	Consultation with Agencies
Section 210.4	Cooperation with the Rules Division
Section 210.5	Use of Subpoenas

Authority Note: Authorized by Section 7.09 and implementing Sections 7.02 -- 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.02 -- 1007.10).

Source Note: 3 Ill. Reg. no. 8, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page \_\_\_, effective December 1, 1980; unless otherwise noted.

**PART 210**

**GENERAL POLICIES**

Section 210.1 Definitions

As used in these rules (Parts 210 through 260):

**"Act"** means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1001 et. seq., as amended).

**"Committee"** means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.

**"Director"** means the Executive Director of the Committee.

**"Register"** means the Illinois Register which is published weekly by the Secretary of State. It contains notices and the text of all proposed and adopted rules.

**"Rules Division"** means the unit in the office of the Secretary of State which files rules and publishes the Register.

Section 210.2 Committee Function

The Committee will fulfill its function of **promoting adequate and proper rules by agencies and understanding on the part of the public respecting such rules** and its responsibility to

review rules and rulemaking. It will seek to cooperate with agencies as much as possible. It will conduct its hearings to promote full and open discussion of rules and rulemaking. This policy is meant to implement the spirit as well as the letter of the Act.

#### Section 210.3 Consultation with Agencies

Some agencies may have some problems implementing or complying with the rulemaking procedures of the Act. The Committee and its staff will discuss these types of problems with agencies. Such consultation will be used to advise agencies about form, statutory authority, or other matters which are considered by the Committee in its review of rules and rulemaking.

#### Section 210.4 Cooperation with the Rules Division

The Rules Division has the functions under the Act of filing rules and of publishing the Register. The Committee will cooperate fully with the Rules Division. The Committee will strive to establish a good working relationship with the Rules Division to insure a smooth and efficient rulemaking process. The Committee's procedures will be coordinated with the Rules Division's "Rules on Rules" (see 1 Ill. Adm. Code 160).

#### Section 210.5 Use of Subpoenas

- a) The Committee is granted subpoena power by Section 7.03(b) of the Act. This power will be used only when an agency refuses:
  - 1) To appear before a Committee hearing.
  - 2) To provide information which is essential to the Committee's functions.
  - 3) To produce records or documents known to exist which are essential to the Committee's functions.
- b) Prior to the use of its subpoena power, the Committee will:
  - 1) Notify the agency head of the refusal and the fact that a subpoena may be used.
  - 2) Allow the agency to present its reasons for the refusal.
- c) The Director will issue a subpoena only when approved by all of the officers of the Committee or by a vote of the Committee.

## TITLE 1: GENERAL PROVISIONS

### CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

#### PART 220

##### REVIEW OF PROPOSED RULEMAKING

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Section 220.3	Request for Economic Analysis
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Authority Note: Authorized by Section 7.09 and implementing Sections 5.01 and 7.06 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01, 1007.06, 1007.09).

Source Note: 3 Ill. Reg. no. 8, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page \_\_\_, effective December 1, 1980; unless otherwise noted.

#### PART 220

##### REVIEW OF PROPOSED RULEMAKING

###### Section 220.1 Definitions

As used in this part:

**"First notice"** means the notice of proposed rulemaking which must be given to the public by agencies pursuant to Section 5.01(a) of the Act. This notice is published in the Register.

**"First notice period"** means the period of time for public comment which begins on the day the first notice appears in the Register. This period must be at least 45 days in length.

**"Second notice"** means the notice of proposed rulemaking which must be given by agencies to the Committee pursuant to Section 5.01(b) of the Act. This notice must contain the

information required by Section 220.5 of this part and should also contain the information requested by Section 220.6 of this part.

**"Second notice period"** means that period of time established by the Act for Committee review of proposed rulemaking. This period must follow the end of the first notice period. It commences on the day the second notice is received by the Committee and will not be more than 45 days in length.

#### Section 220.2 Preliminary Review

In the first five days after the first notice, the agency may request in writing that the Committee conduct an informal review of the agency's proposed rulemaking. When such a review is made, the Committee staff will review the proposed rulemaking, including the notice and the text. The Committee staff may raise questions or problems as a result of its review, and will discuss these questions or problems with the agency. This review will be based on the criteria in Section 220.9. Such review will be in addition to the normal review which is discussed in Sections 220.5 and 220.7.

#### Section 220.3 Request for Economic Analysis

In the first 30 days after the first notice, the Committee may request from the agency an **analysis of the economic and budgetary effects of the proposed rulemaking**. This request will be made in writing by the Director. The request will be made in each case unless it is clear that the effects in the areas outlined in the next section will not be substantial. The Committee will consider the information in the first notice and other available information in deciding whether or not to make this request.

#### Section 220.4 Format of Economic Analysis

If the Committee requests an analysis of the economic effects of the proposed rulemaking, the agency shall submit the analysis in writing to the Committee as part of the second notice. The analysis shall be in the form shown in Illustration A. It must include a discussion of at least these factors and an estimate of the effects of each factor in dollars:

- a) **Any direct economic effect on the persons who will be regulated by the rule.**
- b) **Any effect on the agency's budget.**
- c) **Any effect on the budgets of other State agencies.**
- d) **Any effect on State revenue.**

#### Section 220.5 Second Notice: Required Information

- a) **The second notice period will start on the day the second notice is received by the Committee. It will end 45 days later unless prior to that time the agency receives either:**
  - 1) **A statement of objection from the Committee. The agency may not adopt the rulemaking in this case until after it responds to the objection.**
  - 2) **A notice from the Committee stating that no objection will be issued.**
- b) **The second notice must contain at least the following information:**
  - 1) The name of the agency.
  - 2) The title of the proposed rulemaking.
  - 3) The date of the first notice.
  - 4) **The text and location of any changes made in the rule during the first notice period.**
  - 5) If requested by the Committee as provided in Section 220.3, **an analysis of the economic and budgetary effects of the proposed rulemaking.**
  - 6) A response to any recommendations made by the State Library for changes in the rules to make them comply with the codification scheme.
  - 7) The name of the person who will respond to Committee questions regarding the proposed rulemaking for the agency.
- c) **The second notice should be clearly identified as such, and shall be submitted to the Director at the following address:**

Joint Committee on Administrative Rules  
520 South Second Street, Suite 100  
Springfield, Illinois 62706
- d) **In two working days after the receipt by the Committee of a second notice, the Committee will notify the Rules Division and the agency of the date on which the second notice period started. Notices which do not contain all of the information required by this section and by Section 5.01(b) of the Act will not be accepted by the Committee. An agency which submits such a notice will be informed in writing of the specific reasons the notice was not accepted.**

#### Section 220.6 Second Notice: Additional Information

The agency should include the following information in the second notice at the time it is sent to the Committee. These items are in addition to the items which must be included in the second notice under Section 220.5.

- a) **An evaluation of all of the comments on the proposed rulemaking received by the agency from interested persons during the first notice period. This**

evaluation should not include any questions raised by the Committee in a preliminary review (see Section 220.2). This evaluation should include:

- 1) A list of all of the persons and groups which made comments or which requested the opportunity to make comments.
  - 2) A list of all of the specific criticisms and suggestions which were raised in the comments.
  - 3) The agency's evaluation of each of the specific criticisms and suggestions.
  - 4) A statement that the agency has considered all of the comments which were received during the first notice period.
- b) **An analysis of the expected effects of the proposed rulemaking**, which should include at least these items:
- 1) Impact on the public affected groups.
  - 2) Changes in the agency's programs or structure which will result from the rule.
- c) **A justification and rationale for the proposed rulemaking**, which should include at least these items:
- 1) Changes in statutory language which require the rulemaking.
  - 2) Changes in agency policy, procedures, or structure which require the rulemaking.
  - 3) Other rules and proposed rules of the agency, which relate to the rulemaking.
  - 4) Federal laws, rules, or funding requirements, which may affect the rulemaking.
  - 5) Court orders or rulings which relate to the rulemaking.

#### Section 220.7 Staff Review

The Committee staff will review each second notice which is received as provided in Section 220.5. The items outlined in Section 220.6 will be included in the review. This staff review will be based on the criteria in Section 220.9. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee, and may develop a recommendation for action by the Committee. The staff may recommend that the Committee issue an objection, develop legislation, take some other action, or take no action. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open

discussion of proposed rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

#### Section 220.8 Committee Hearing

The Committee will hold full and open hearings at least once each month on proposed rulemaking. The agenda for each hearing will be published as soon as possible prior to the hearing in the Register. Oral testimony will be taken at the hearing from the agency. Written comments will be considered from persons or groups which are affected by the rules as they relate to the criteria in Section 220.9. Such written comments should be sent to the Director at the following address:

Joint Committee on Administrative Rules  
520 South Second Street, Suite 100  
Springfield, Illinois 62706

Comments should be received at least three working days prior to the hearing. The Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided to the agency.

#### Section 220.9 Criteria for Review

The Committee will consider these criteria in its review of each proposed rulemaking:

- a) Substantive
  - 1) Is there legal authority for each part of the rulemaking?
  - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
  - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
  - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
  - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
  - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
  - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?

- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
  - 1) Does it comply with Section 5.01 of the Act?
  - 2) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
  - 3) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
  - 4) Does it comply with the agency's own rules for its rulemaking process?
  - 5) Was the agency responsive to public comments which were made on the rulemaking?

#### Section 220.10 Objection; Notice of No Objection

- a) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.9, **the Committee will object to the proposed rulemaking.**
- b) If the Committee does not make such finding, **the Committee may notify the agency in writing that no objection will be issued.** Such a notice will be mailed to the agency in the first two working days after the day of the Committee hearing on the proposed rulemaking. Such notification will be made unless either:
  - 1) The second notice period has expired.
  - 2) The Committee finds, at the time of the hearing, that additional information is necessary in order to fully review the rulemaking.
- c) Upon receiving such notice that no objection will be issued, the agency may proceed to adopt the proposed rulemaking.
- d) A notice of no objection which is issued by the Committee should not be taken as implying approval in any way of the content of the rulemaking.

#### Section 220.11 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a proposed rulemaking, **it shall certify the fact of the objection to the agency.** Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration B. **The certification shall include a statement of the specific objections of the Committee to the proposed rulemaking.**

- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

#### Section 220.12 Response to Objection: Deadline, Format

**The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections.** The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration C.

#### Section 220.13 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) **Modify the proposed rulemaking to meet all of the specific objections stated by the Committee.** The complete text of the rules including all of the changes should be included in the response.
- b) **Withdraw the proposed rulemaking.** The agency should state the specific objections of the Committee or other reasons which are the basis of the withdrawal.
- c) **Refuse to modify or withdraw the proposed rulemaking.** The agency should present in its response its reasons for refusing to modify or withdraw the proposed rulemaking.

#### Section 220.14 Review of Response to Objection

The Committee will review each of the responses to its objections which are made by agencies. If an agency modifies a proposed rulemaking to meet the specific objections of the Committee, the Committee will examine each of the specific changes made to meet the objections. **If the Committee finds that the changes do not remedy the objections, it will so notify the agency. It will also submit a copy of such a notice to the Rules Division to be published in the Register.** The notice will include a statement of the reasons the Committee found that the changes do not remedy the objections.

#### Section 220.15 Failure to Respond

**If the Committee does not receive a response to an objection from the agency within 90 days after the receipt of the objection by the agency, the rulemaking will be withdrawn by operation of law.** Following the end of the 90 days, the Director will send a notice of the

**fact of the withdrawal to the Rules Division.** The notice will state that (1) the agency has failed to respond within the 90 days, and (2) the rulemaking has been withdrawn by operation of law. The date on which the rulemaking will be withdrawn is the day after the last day of the 90 day period. The agency may not adopt a rulemaking which has been withdrawn.

#### Section 220.16 Limit of Substantive Changes

**After the start of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Committee. The Committee will review the text of adopted rules to insure that substantive changes have not been made in violation of this provision of the Act.**

#### Section 220.17 Recommend Legislation

**The Committee may draft legislation** as a result of its review of proposed rulemaking. The purpose of such legislation will be to provide authority, for the rulemaking, to resolve conflicts between the rules and statutes, to clarify the intent of acts which require the rulemaking, or to deal with other issues which are discovered in its review. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

## TITLE 1: GENERAL PROVISIONS

### CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

#### PART 230

##### REVIEW OF EMERGENCY RULEMAKING

Section 230.1	Basic Policy
Section 230.2	Definition
Section 230.3	Staff Review
Section 230.4	Primary Criteria for Review
Section 230.5	Secondary Criteria for Review
Section 230.6	Objection
Section 230.7	Certification of Objection; Statement of Specific Objections
Section 230.8	Response to Objection: Format
Section 230.9	Response to Objection: Manner
Section 230.10	Failure to Respond

Authority Note: Authorized by Section 7.09 and implementing Sections 5.02 and 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.07, 1007.09).

Source Note: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page \_\_\_, effective December 1, 1980; unless otherwise noted.

#### PART 230

##### REVIEW OF EMERGENCY RULEMAKING

###### Section 230.1 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5.02 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency process must be limited. The process should only be used in a situation which **reasonably constitutes a threat to the public interest, safety or welfare, and requires the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Act.**
- b) The Committee is empowered by Section 7.07 of the Act **to examine any rule.** The Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to insure that the

use of the process is limited to only those situations which meet the requirements of Section 5.02 of the Act. The criteria which are used in this review are stated in Sections 230.4 and 230.5 of this part.

#### Section 230.2 Definition

As used in this part, **"emergency rulemaking"** means both the process of adopting a rule as provided in Section 5.02 of the Act and the rule which is adopted by that process.

#### Section 230.3 Staff Review

The Committee staff will review each emergency rulemaking, including both the notice and the text of the rulemaking. This review will be based on the criteria in Sections 230.4 and 230.5 of this part. The Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of emergency rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing..

#### Section 230.4 Primary Criteria for Review

The Committee will first consider these criteria in its review of emergency rulemaking:

- a) Does the agency's statement of the need for the emergency rulemaking show that it complies with Section 5.02 of the Act? The statement must show that **a situation exists which reasonably constitutes a threat to the public interest, safety or welfare and which requires the adoption of the rule upon fewer days' notice than is required by Section 5.01 of the Act.**
- b) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- c) Is the rulemaking limited to what is required by the emergency? It should contain no provisions which are not required to meet the emergency.
- d) Did the agency take **actions to make the emergency rulemaking known to the persons who may be affected by it?**
- e) Has the agency adopted the same rules, or rules which have **substantially the same purpose and effect**, through the use of the emergency process in the past 24 months?

### Section 230.5 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 230.4, the Committee will then consider these criteria in its review of each emergency rulemaking:

#### a) Substantive

- 1) Is there legal authority for each part of the rulemaking?
- 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
- 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?

#### b) Propriety

- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

#### c) Procedural

- 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 3) Does it comply with the agency's own rules for its rulemaking process?

### Section 230.6 Objection

If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.4 and 230.5, **it will object to the rules.** The fact that the Committee does not object to a rulemaking should not be taken as implying approval in any way of the content of the rulemaking.

### Section 230.7 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to an emergency rulemaking, it **shall certify the fact of the objection to the agency**. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration D. **The certification shall include a statement of the specific objections of the Committee to the rules.**
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

#### Section 230.8 Response to Objection: Deadline, Format

**The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections.** The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration E.

#### Section 230.9 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) **Modify the emergency rulemaking to meet all of the specific objections stated by the Committee.** The complete text of the rules including all of the changes should be included in the response. These changes may be made by submitting a notice with the changes to the Rules Division to be published in the Register. Modifying emergency rules by publishing such a notice will not be deemed to be a new rulemaking. It will not extend the 150 day effective period of the rules, nor will it be deemed to violate the provision of the Act which prohibits adoption of the same emergency rules twice.
- b) **Repeal the emergency rulemaking.** This may be done by submitting a notice to the Rules Division as provided in Section 160.506 of the Rules on Rules (1 Ill. Adm. Code 160.506). The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal.
- c) **Refuse to modify or repeal the emergency rulemaking.** The agency should present in its response its reasons for refusing to modify or repeal the emergency rulemaking.

Section 230.10 Failure to Respond

**Failure of an agency to respond to an objection to an emergency rule within 90 days of the receipt of the objection shall be deemed to be a refusal to modify or repeal the rule.**

## TITLE 1: GENERAL PROVISIONS

### CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

#### PART 240

##### REVIEW OF PEREMPTORY RULEMAKING

Section 240.1	Basic Policy
Section 240.2	Definitions
Section 240.3	Submission; Staff Review
Section 240.4	Staff Report
Section 240.5	Primary Criteria for Review
Section 240.6	Secondary Criteria for Review
Section 240.7	Objection
Section 240.8	Certification of Objection; Statement of Specific Objections
Section 240.9	Response to Objection: Format
Section 240.10	Response to Objection: Manner
Section 240.11	Rulemaking in Response to Objection
Section 240.12	Failure to Respond
Illustration A	Agency Analysis of Economic and Budgetary Effects
Illustration B	Certification of Objection to Proposed Rulemaking
Illustration C	Agency Response to Objection to Proposed Rulemaking
Illustration D	Certification of Objection to Emergency or Peremptory Rulemaking
Illustration E	Agency Response to Objection to Emergency or Peremptory Rulemaking

Authority Note: Authorized by Section 7.09 and implementing Sections 5.02, 7.04 and 7.07 of the Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.04, 1007.07, 1007.09).

Source Note: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 40, page \_\_\_, effective December 1, 1980; unless otherwise noted.

#### PART 240

##### REVIEW OF PEREMPTORY RULEMAKING

###### Section 240.1 Basic Policy

- a) The fact that situations occur in which agencies are required by a federal law, federal rules and regulations, or a court order to take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, peremptory rules must be adopted under the process provided for this purpose by Section 5.03 of the Act. However, the Committee believes that public

notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the peremptory process must be limited. The process should only be used in a situation which precludes the agency's compliance with the general rulemaking requirements of the Act.

- b) The Committee is empowered by Section 7.07 of the Act to **examine any rule**. The Committee will review each rule adopted through the use of peremptory rulemaking under this power. The purpose of this review is to insure that use of the process is limited to only those situations which meet the requirements of Section 5.03 of the Act. The criteria which are used in this review are stated in Sections 240.5 and 240.6 of this part.

#### Section 240.2 Definitions

As used in this part:

**"Conditions which preclude compliance with the general rulemaking requirements imposed by Section 5.01 of the Act"** includes only those conditions which make it impossible to comply with the notice or hearing requirements of the Act. A federal law, federal rule or regulation, or court order which merely makes it more difficult to comply or which prescribes the content of such rulemaking does not make it impossible to comply.

**"Federal rules and regulations"** means those rules which are or will be published in the Code of Federal Regulations.

**"Peremptory rulemaking"** means both the process of adopting a rule as provided in Section 5.03 of the Act and the rule which is adopted by that process.

#### Section 240.3 Submission; Staff Review

On the same day that a notice of peremptory rulemaking is filed with the Rules Division, the agency shall submit to the Committee a copy of the court order or specific citation of the federal law or federal rules or regulations which require the rulemaking. The staff will review the peremptory rulemaking, including the notice and the text. This staff review will be based on the criteria in Sections 240.5 and 240.6. The staff may raise questions or problems as a result of its review of the rulemaking, and will discuss these questions or problems with the agency.

#### Section 240.4 Staff Report

The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be

advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion, the staff will try to insure that the agency is aware of the substance of the recommendations.

#### Section 240.5 Primary Criteria for Review

The Committee will first consider these criteria in its review of peremptory rulemaking:

- a) Was the agency **precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act**, as that phrase is defined in Section 240.3 of this part?
- b) Was the agency **required to adopt rules as a direct result of federal law, federal rules and regulations, or court order**?
- c) Is the rulemaking limited to what is required by the federal law, federal rules and regulations, or court order? It should contain no provisions which are not required.
- d) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- e) Did the agency file the notice within 30 days after the change in the rules was required as required by the Act?

#### Section 240.6 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 240.6, the Committee will then consider these criteria in its review of each peremptory rulemaking:

- a) Substantive
  - 1) Is there legal authority for each part of the rulemaking?
  - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
  - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
  - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
  - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
  - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?

- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
  - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
- 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
  - 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
  - 3) Does it comply with the agency's own rules for its rulemaking process?

#### Section 240.7 Objection

If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.6 and 240.7, it will object to the peremptory rules. The fact that the Committee does not object to a rulemaking should not be taken as implying in any way approval of the content of the rulemaking.

#### Section 240.8 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a peremptory rulemaking, it **shall certify the fact of the objection to the agency**. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration D. **The certification shall include a statement of the specific objections of the Committee to the rules.**
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

#### Section 240.9 Response to Objection: Format

**The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections.** The agency response shall address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration E.

#### Section 240.10 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) **Amend the peremptory rules to meet all of the specific objections stated by the Joint Committee.**
- b) **Repeal the peremptory rules.** The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal.
- c) **Refusal to amend or repeal the peremptory rules.** The agency should present in its response its reasons for refusing to amend or repeal the rules.

#### Section 240.11 Rulemaking in Response to Objection

**If an agency elects to amend or repeal a rule in response to an objection, it should begin rulemaking for that purpose by giving notice as required by Section 5.01 of the Act. The Committee will give priority to rulemaking which was begun to meet an objection in setting its agenda. The agency should complete rulemaking within 180 days after giving notice in the Register.**

#### Section 240.12 Failure to Respond

**Failure of an agency to respond to an objection by the Committee to a peremptory rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.**

## TITLE 1: GENERAL PROVISIONS

### CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

#### PART 250

##### FIVE-YEAR EVALUATION OF ALL EXISTING RULES

Section 250.1	Authority
Section 250.2	Relation to Other Reviews
Section 250.3	Subject Categories
Section 250.4	Schedule: First Year
Section 250.5	Schedule: Second Year
Section 250.6	Schedule: Third Year
Section 250.7	Schedule: Fourth Year
Section 250.8	Schedule: Fifth Year
Section 250.9	Notice to Agencies
Section 250.10	Initial Questions
Section 250.11	Staff Review
Section 250.12	Public Hearings
Section 250.13	Grouping of Rules
Section 250.14	Criteria for Review
Section 250.15	Staff Report; Agency Response
Section 250.16	Hearing on Staff Report
Section 250.17	Actions as Results of Review
Section 250.18	Actions: Objection
Section 250.19	Agency Response to Objection
Section 250.20	Failure to Respond
Section 250.21	Actions: Recommend Agency Action
Section 250.22	Actions: Recommend Legislation

Authority Note: Authorized by Section 7.09 and implementing Section 7.08 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.08, 1007.09).

Source Note: 3 Ill. Reg. no. 34, page 204, effective September 1, 1979; amended and codified at 4 Ill. Reg. no. 49, page \_\_\_, effective December 1, 1980; unless otherwise noted.

#### PART 250

##### FIVE-YEAR EVALUATION OF ALL EXISTING RULES

###### Section 250.1 Authority

The Committee will review all agency rules on a periodic basis by the subject of the rules. Each set of rules of each agency will be evaluated during the course of this review **at least once every five years**. This review is mandated by Section 7.08 of the Act.

###### Section 250.2 Relation to Other Reviews

The five-year review of all agency rules discussed in this part is in addition to the review of proposed rules of state agencies and other reviews of agency rules authorized by other provisions of the Act.

#### Section 250.3 Subject Categories

To insure that the Committee reviews **similar rules at the same time**, it will classify each set of rules in one of the subjects listed in Section 250.4 through 250.8. As new sets of rules are adopted, they will be classified into these subjects and the Committee will maintain a current listing of all of the rules under each subject.

#### Section 250.4 Schedule: First Year

In the first year of each five-year review cycle the Committee will review all of the rules classified in these subjects:

- a) Industry and Labor
  - 1) Agricultural Regulation
  - 2) Business Regulation
  - 3) Consumer Protection
  - 4) Labor Laws
  - 5) Regulation of Occupations

#### Section 250.5 Schedule: Second Year

In the second year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
  - 1) Special Education
  - 2) Vocational and Professional Education
- b) Financial Institutions
- c) Government Management
  - 1) State Buildings Construction and Maintenance
  - 2) State Travel
- d) Human Resources
  - 1) Grants for Medical Services
  - 2) Public Health
  - 3) State Adult Institutions
- e) Natural Resources
  - 1) Land Pollution Control

- 2) Wildlife Management
- f) Public Utilities

#### Section 250.6 Schedule: Third Year

In the third year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
  - 1) Educational Grants and Scholarship Programs
  - 2) Cultural Resources
- b) Emergency Services
- c) Government Management
  - 1) Elections
  - 2) Records and Information Management
  - 3) State Financial Management
- d) Human Resources
  - 1) Food Handling and Service
  - 2) Regulation of Social Services
- e) Natural Resources
  - 1) Parks and Recreation Management
  - 2) Public Water Supplies
- f) Transportation
  - 1) Railroad Regulation

#### Section 250.7 Schedule: Fourth Year

In the fourth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
  - 1) Higher Education
  - 2) Elementary and Secondary Education
- b) Government Management
  - 1) Government Purchasing
  - 2) Personnel and Merit Systems
  - 3) Retirement Systems
- c) Human Resources
  - 1) Grants for Social Services
  - 2) Regulation of Health Facilities

- d) Natural Resources
  - 1) Air Pollution Control
  - 2) Energy
- e) Transportation
  - 1) Airplane and Airport Regulation
  - 2) Traffic Safety

#### Section 250.8 Schedule: Fifth Year

In the fifth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
  - 1) Educational Facilities and Safety
- b) Government Management
  - 1) Organizational and Rulemaking Rules
  - 2) State Revenue
- c) Human Resources
  - 1) Regulation of Health Professions
  - 2) Regulation of Medical Services
  - 3) State Juvenile Institutions
- d) Law Enforcement
- e) Natural Resources
  - 1) Water Resources and Pollution Control
- f) Transportation
  - 1) Highway Planning, Construction and Maintenance
  - 2) Trucking Industry Regulation

#### Section 250.9 Notice to Agencies

At the beginning of each year of the review, the Committee will notify each agency whose rules will be reviewed during that year. Such notification will include the following information:

- a) The specific sets of rules which are classified in the subject which will be reviewed.
- b) The location of such rules in the collection of the agency's rules which are on file with the Rules Division.
- c) The time period during which the Committee will be reviewing such rules.

#### Section 250.10 Initial Questions

The Committee will request the agency to submit the following information on each set of rules being reviewed. The agency will be allowed at least 60 days to submit this information.

- a) A citation to the specific statute which authorizes each set of rules and the specific statute which each set of rules is implementing or interpreting.
- b) A list of the programs and organizational units of the agency which are related to each set of rules.
- c) An estimate of the cost to the State for operation of the agency programs related to each set of rules and for enforcement or monitoring of compliance with the rules.
- d) An estimate of the extent of compliance and non-compliance by the affected public with each set of rules, and the number and extent of variances permitted by the agency to each set of rules.
- e) An estimate of the effect of each set of rules on state revenue.
- f) An estimate of the economic effect on the persons and groups which are regulated by each set of rules.
- g) A discussion of the public need for the regulation provided by each set of rules. This discussion should include evidence of any harm that would result to the public health, welfare or safety, if the rules were repealed.

#### Section 250.11 Staff Review

The staff of the Committee will review each set of rules. Such staff review will be based on the criteria in Section 250.14. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The agency will be allowed at least 60 days to provide written responses to any questions raised.

#### Section 250.12 Public Hearings

The Committee will hold one or more public hearings during the review of the rules in each subject to gather information and views from interested persons and groups, when it finds that such a hearing is necessary for a complete review of the rules. The Chairman of the Committee may designate a subcommittee for the purpose of holding such public hearings. The agenda of such hearings shall be published in the Register as provided in Section 7.02(c) of the Act. Each agency whose rules are the subject of a public hearing will be notified of the hearing. Testimony which is presented at such hearings will be considered by the Committee in its review of the rules as it relates to the criteria in

## Section 250.14.

### Section 250.13 Grouping of Rules

The Committee may further group rules together by agency, or by subject to facilitate the conduct of the review or to report the findings to the Committee.

### Section 250.14 Criteria for Review

The Committee will consider these criteria in its review of each set of rules:

- a) Substantive
  - 1) Is there legal authority for each part of the rules?
  - 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
  - 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
  - 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?
- b) Propriety
  - 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
  - 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
  - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
  - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
  - 1) Were the rules adopted in compliance with the Act?
  - 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
  - 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
  - 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
  - 5) Has the agency been responsive to public comments which have been

made on the rules and to related requests for rulemaking?

d) Additional

- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
- 2) Are the rules accurate and current in relation to agency operations and programs?
- 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 250.15 Staff Report; Agency Response

The staff will report the results of its review to the Committee. The staff report may include recommendations for any of the types of action listed in Section 250.17. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.16 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.14. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.12 will also be considered.

Section 250.17 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.18.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such

action shall be taken as discussed in Section 250.21.

- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

#### Section 250.18 Actions: Objections

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.14, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration F. A statement of specific objections to the rule shall be included.

#### Section 250.19 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration G.
- b) The agency must respond to an objection by the Committee in one of the following ways:
  - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
  - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
  - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

#### Section 250.22 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

#### Section 250.21 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration H. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

#### Section 250.23 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

## TITLE 1: GENERAL PROVISIONS

### CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

#### PART 260

##### COMPLAINT REVIEWS OF EXISTING RULES

Section 260.1	Authority and Purpose
Section 260.2	Definition of Complaint
Section 260.3	Items to be Included in Complaints
Section 260.4	Staff Review
Section 260.5	Complaints About Policies Not in Rules
Section 260.6	Staff Report
Section 260.7	Criteria for Review
Section 260.8	Hearing by the Committee
Section 260.9	Objection
Section 260.10	Agency Response to Objection
Section 260.11	Failure to Complete Rulemaking
Section 260.12	Recommend Legislation
Section 260.13	Notice to Persons Initiating Complaint
Illustration F	Certification of Objection to Existing Rules
Illustration G	Agency Response to Objection to Existing Rules
Illustration H	Certification of Recommendation

Authority Note: Authorized by Section 7.07 and implementing Sections 7.07 and 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1007.04, 1007.07, 1007.09).

Source Note: 3 Ill. Reg. no. 34, page 219, effective August 24, 1979; amended and codified at 4 Ill. Reg. no. 49, page \_\_\_, effective December 1, 1980; unless otherwise noted.

#### PART 260

##### COMPLAINT REVIEWS OF EXISTING RULES

###### Section 260.1 Authority and Purpose

The Committee will review rules of state agencies based on complaints received from interested persons or groups as provided in this part. This type of review of rules is authorized by Sections 7.04 and 7.07 of the Act. Review of rules by the Committee as provided in this part is in the nature of a legislative investigation and is not a prerequisite in any way for judicial review of rules.

#### Section 260.2 Definition of Complaint

For the purposes of this part, a complaint will consist of any written communication received by the Committee which raises questions which are related to the criteria in Section 260.7. Complaints may address one or more of the following:

- a) An existing rule of an agency.
- b) The failure of an agency to fully or properly enforce its rules.
- c) The absence of rules which are required by statute or are necessary for the proper conduct of an agency program or function.
- d) An agency policy which is applied generally, but is not embodied in the rules of the agency.

#### Section 260.3 Items to be Included in Complaints

- a) Complaints should be sent to the Director at this address:  
Joint Committee on Administrative Rules  
520 South Second Street, Suite 100  
Springfield, Illinois 62706
- b) Each complaint should include these items:
  - 1) A discussion of the issues involved.
  - 2) The names and addresses of the persons or groups making the complaint.
  - 3) The agency whose rules, policies, or practices are being questioned.
  - 4) The specific rule or set of rules involved.
  - 5) A description of the effect of the rules, policies or practices on the persons or groups making the complaint.
  - 6) A discussion of any additional facts necessary to understand the issues.
  - 7) A discussion of how the issues relate to the criteria in Section 260.7.

#### Section 260.4 Staff Review

The staff of the Committee will review each complaint. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. Such staff review will be based on the criteria in Section 260.7. The staff will try to insure that the agency is aware of the substance of the complaint and the results of the staff review.

#### Section 260.5 Complaints About Policies Not in Rules

When a complaint is received which alleges that an agency has a policy which is not embodied in rules, the Committee will encourage the persons making the complaint to petition the agency as provided in Section 8 of the Act.

#### Section 260.6 Staff Report

The staff shall report the results of its review to the Committee. The staff report will present evidence of possible problems with the rules in relation to the criteria in Section 260.7. The report may include recommendations for action by the Committee. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action.

#### Section 260.7 Criteria for Review

The Committee will consider these criteria in its review of rules based on a complaint:

- a) Substantive
  - 1) Is there legal authority for each part of the rules?
  - 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
  - 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
  - 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?
- b) Propriety
  - 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
  - 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
  - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
  - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
  - 1) Were the rules adopted in compliance with the Act?

- 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
  - 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
  - 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
  - 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?
- d) Additional
- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
  - 2) Are the rules accurate and current in relation to agency operations and programs?
  - 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

#### Section 260.8 Hearing by the Committee

Any one of the officers of the Committee may place a complaint on the agenda of the Committee to consider the rules. Such action will be based on evidence of possible problems with the rules in relation to the criteria in Section 260.7. A complaint will not be placed on the agenda if the officers find that the same issues have been previously considered by the Committee, unless the complaint reveals substantial information which was not available to the Committee at that time. At the hearing the persons making the complaint and the agency will be allowed to present their views. If the Committee finds that other persons or groups are directly affected by the rule, such persons or groups will also be allowed to present their views orally or in writing.

#### Section 260.9 Objection

If the Committee finds that a rule which is the subject of a complaint does not meet one or more of the criteria in Section 260.7, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration F. A statement of specific objections to the rule shall be included.

#### Section 260.10 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration G.
- b) The agency must respond to an objection by the Committee in one of the following ways:
  - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
  - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
  - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

#### Section 260.11 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

#### Section 260.12 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

#### Section 260.13 Notice to Persons Making Complaint

The Director will try to insure that the persons or groups making the complaint are aware of the result of the Committee review and the nature of the agency response.

ILLUSTRATION A  
AGENCY ANALYSIS  
OF ECONOMIC AND BUDGETARY EFFECTS  
OF PROPOSED RULEMAKING

Agency: \_\_\_\_\_

Proposed Rulemaking: \_\_\_\_\_

---

1. Direct economic effect on the persons who will be regulated by the rule.

Discussion

Specific Estimated Effect

\$

2. Effect on the agency's budget.

Discussion

Specific Estimated Effect

\$

3. Effect on the budgets of other state agencies.

Discussion

Specific Estimated Effect

\$

4. Effect on State revenue.

Discussion

Specific Estimated Effect

\$

5. Other considerations relevant to the economic and budgetary effects of the proposed rulemaking.

Discussion

\_\_\_\_\_  
Signature of Agency Official

[See Sections 220.3, 220.4 and 220.5]

ILLUSTRATION B

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION  
TO PROPOSED RULEMAKING

County of Sangamon )  
State of Illinois )

I, \_\_\_\_\_, Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on \_\_\_\_\_ (Date), objected to \_\_\_\_\_ (Title of Rulemaking), proposed by \_\_\_\_\_ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of receipt of this Statement of Objection shall constitute withdrawal of the proposed rulemaking published in the \_\_\_\_\_, (Date) Illinois Register in its entirety.

\_\_\_\_\_  
(Signature)

[ By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten Name)

]

\_\_\_\_\_  
(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this \_\_\_\_ (Date) day of \_\_\_\_ (Month), 19\_\_ (Year).

\_\_\_\_\_  
Notary Public

[ See Section 220.11]

ILLUSTRATION C

AGENCY RESPONSE TO JOINT COMMITTEE OBJECTION  
TO PROPOSED RULEMAKING

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Title and Subject of Rule: \_\_\_\_\_

Response (Check One):      \_\_\_\_\_      Modification of Rulemaking to Meet Objections  
   \_\_\_\_\_      Withdrawal of Rulemaking  
   \_\_\_\_\_      Refusal to Modify or Withdraw

\_\_\_\_\_  
Signature of Agency Official

Agency Response to Specific Joint Committee Objections:

(Respond to each objection raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

[See Section 220.12]

ILLUSTRATION D

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION  
TO EMERGENCY OR PEREMPTORY RULES

County of Sangamon )  
State of Illinois )

I, \_\_\_\_\_, Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Section 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on \_\_\_\_\_ (Date), objected to the \_\_\_\_\_ (Name of Agency)'s, \_\_\_\_\_ (Emergency, Peremptory) rules entitled or concerning \_\_\_\_\_ (Title or Subject of Rules) which were published in the \_\_\_\_\_ (Date), Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure of the Agency to respond to the Joint Committee's objections to a rule within 90 days of receipt of this Certification of Objection shall constitute refusal to amend or repeal the rule.

\_\_\_\_\_  
(Signature)

[ By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten Name)

\_\_\_\_\_  
(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this \_\_\_\_ (Date) day of \_\_\_\_ (Month), 19\_\_ (Year).

\_\_\_\_\_  
Notary Public

[ See Sections 230.7 and 240.9 ]

### ILLUSTRATION E

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Title and Subject of Rule:

Response (Check One): \_\_\_\_\_ Initiate rulemaking to repeal the rules to meet the Joint Committee's objection

\_\_\_\_\_ Initiate rulemaking to amend the rules to meet the Joint Committee's objection

\_\_\_\_\_ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register:

**Agency Response to Specific Joint Committee Objections:**

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

[See Sections 230.8 and 240.10]

ILLUSTRATION F

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION  
TO EXISTING RULES

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules objected on \_\_\_\_\_ (Date) to the \_\_\_\_\_ (Name of Agency)'s rules entitled or concerning \_\_\_\_\_ (Title or Subject of Rules) which appear at \_\_\_\_\_ (Page or Location Identification) in the agency's rules.

A statement of the specific objections of the Joint Committee accompanies this certification.

Please take notice that failure to respond to this objection within 90 days, or failure to complete rulemaking initiated in response to this objection within 180 days of the receipt of this Certification of Objection shall constitute a refusal to remedy the objection.

Certified \_\_\_\_\_ (Date).

\_\_\_\_\_  
(Signature)

[By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten Name)]

\_\_\_\_\_  
(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this \_\_\_\_ (Date) day of \_\_\_\_ (Month), 19\_\_ (Year).

\_\_\_\_\_  
Notary Public

[See Sections 250.18 and 260.9]

## Date: \_\_\_\_\_

Title and Subject of Rule:

- 317 -

ILLUSTRATION H

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF RECOMMENDATION

The Joint Committee on Administrative Rules hereby certifies that, on \_\_\_\_\_ (Date), pursuant to Section 7.04(3), 7.04(1) and 7.08 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules as a result of its review of rules entitled or concerning \_\_\_\_\_ (Title or Subject of Rules) recommended rulemaking or other administrative action by \_\_\_\_\_ (Name of Agency).

A statement of the specific recommendation of the Joint Committee and reasons for the recommendation accompanies this certification.

Please take notice that failure to act to implement this recommendation within reasonable time shall be considered by the Joint Committee as a refusal to remedy the situation.

Certified \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Signature)

[ By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten Name)

]

\_\_\_\_\_  
(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this \_\_\_\_ (Date) day of \_\_\_\_ (Month), 19\_\_ (Year).

\_\_\_\_\_  
Notary Public

[ See Section 250.21 ]

APPENDIX D(1): SENN PARK NURSING HOME V. MILLER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT LAW  
(COUNTY) ~~(CITY)~~ (DIVISION) ~~(CITY)~~

DOCUMENT SENT TO  
IDPA

SENN PARK NURSING CENTER, a  
Division of Mid-States Health  
Centers, Inc., et al.,

v. Plaintiffs,

NO. 80 L 4422

RECEIVED

JUL 15 1980

ATTORNEY GENERAL

JEFFREY C. MILLER, Acting Director  
of the Illinois Department of  
Public Aid,

Defendant.

IDPA GENERAL COUNSEL

ORDER

This matter coming on to be heard on cross motions of the parties for summary judgment, the matter having been fully briefed and oral argument of counsel having been heard;

IT IS HEREBY ORDERED that, there being no genuine issue of material fact, the change in the Illinois State Plan for the reimbursement of Plaintiffs for Medicaid services proposed by Defendant Miller in the Notice of December 14, 1979 is invalid because (1) said change is a "rule" within the meaning of the Illinois Administrative Procedure Act, Ill. Rev. Stat. ch. 127, §1003.09; and said change was not published according to the notice and publication provisions of §1005 of that Act; and said change did not fall within any of the exceptions to said requirements; and (2) said change was not published according to the notice and publication requirements of 42 C.F.R. §447.205;

IT IS FURTHER ORDERED that Defendant Miller reimburse Plaintiffs for services rendered under the Medicaid program according to the 1978 State Plan, and not according to the proposed change, commencing with services rendered on February 15, 1980, the date of Plaintiffs' demand on Defendant Miller

IT IS FURTHER ORDERED that this order is stayed pending expiration of the statutory time limit for appeal.

JUDGE ARTHUR L. DUNNE

CLK

RICHARD F. ZEMBLE  
Attorney for Plaintiffs  
115 South LaSalle Street  
Chicago, Illinois 60603  
(312) 781-2200

ENTER:

JUL 2 1980

CIRCUIT COURT

APPENDIX D(2)

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT  
ROCK ISLAND COUNTY, ILLINOIS

IOWA-ILLINOIS GAS AND )  
ELECTRIC COMPANY, )  
 )  
Appellant, )  
 )  
v. )  
 )  
ILLINOIS COMMERCE COMMISSION, )  
 )  
Appellee. )  
 )  
and )  
 )  
THE PEOPLES GAS LIGHT & COKE )  
COMPANY and NORTH SHORE GAS )  
COMPANY, )  
 )  
Appellants, )  
 )  
v. )  
 )  
ILLINOIS COMMERCE COMMISSION, )  
 )  
Appellee. )  
 )  
COMMUNITY THRIFT CLUBS, INC., )  
et al., )  
 )  
Intervening Appellees. )

FILED in the CIRCUIT COURT  
OF ROCK ISLAND COUNTY  
GENERAL DIVISION  
FEB 21 1980

*W. L. Nelson*  
Clerk of the Circuit Court

No. 79 MR 99 Cons.  
80 MR 8

RECEIVED  
OCT 09 1980  
ILLINOIS COMMERCE COMMISSION  
CONSUMER AFFAIRS DIVISION  
SPRINGFIELD, ILL.

ORDER

This cause comes on for hearing on the appeal of appellants Iowa-Illinois Gas and Electric Company, Peoples Gas Light & Coke Company, and North Shore Gas Company (collectively referred to as "the utilities"), pursuant to Ill. Rev. Stat.,

ch. 111 2/3, §72, for the purpose of determining the reasonableness and lawfulness of Order 79-R7, including the Special "Emergency" Rules attached thereto as Appendix A and Appendix B (the "Order"), promulgated by appellee Illinois Commerce Commission ("ICC") on November 2, 1979. The Court, having considered the administrative record, as well as the materials and evidence submitted to the Court by the parties herein, and the briefs and arguments of counsel, and being fully advised in the premises, hereby finds and concludes:

#### FINDINGS AND CONCLUSIONS

1. That this Court has jurisdiction over the parties and the subject matter of this action, and venue is proper pursuant to Section 68 of the Utilities Act (Ill. Rev. Stat., ch. 111 2/3, §72).

2. That the Order was not promulgated in compliance with the procedural requirements of the Illinois Administrative Procedures Act (Ill. Rev. Stat., ch. 127, §1001 et seq.) ("IAPA"), and it was not a valid excuse of rulemaking authority.

(a) The ICC did not comply with the rule making requirements of Section 5(a) of the IAPA (Ill. Rev. Stat., ch. 127, §1005(a)). No notice of any proposed rule was given at least 45 days prior to the agency's action. The

ICC published no notice in the Illinois Register containing the text of the proposed rule and stating the specific statutory authority upon which the proposed rule is based and authorized, describing the issues involved, and stating the time, place, and manner in which interested persons may present their views and comments concerning the proposed action. The ICC provided no opportunity for comments on any proposed rule, particularly Special Rule B, by failing to: (i) afford the utilities reasonable opportunities to submit data, views, arguments or comments in accordance with statutory procedures; (ii) indicate the manner in which such submissions were to be made; and (iii) consider fully all submissions respecting the proposed rule.

(b) The ICC did not comply with the requirements for emergency action of Section 5(b) of the IAPA (Ill. Rev. Stat., ch. 127, §1005(b)). The Order does not contain a sufficient finding of an emergency entitling the ICC to take summary action. The Order contains no finding of any emergency situation reasonably constituting a threat to the public interest, safety or welfare, requiring adoption of the Special Rules upon fewer than 45 days' notice. The Order contains no written statement of the ICC's reasons for any such finding of an emergency. There is nothing in the administrative record sufficient to support a finding of an emergency, and the ICC has not shown evidence to

support a finding of any circumstances reasonably constituting an emergency, as required by the IAPA.

3. That the Order was not promulgated in compliance with the procedural requirements of the Utilities Act.

(a) The ICC did not comply with the requirements of Section 65 of the Utilities Act that the ICC shall make and render findings of fact concerning the subject matter and facts inquired into and enter its order based thereon (Ill. Rev. Stat., ch. 111 2/3, §69). The findings set forth in the Order are not sufficient to support the ICC's action. The Order does not contain sufficient findings concerning the subject matters of the Order and the facts of the ICC's inquiry. There are no findings that the Order is necessary to protect the health, safety, or welfare of the public. The ICC made no finding that any of the rules, regulations, or practices of the utilities were unjust, unreasonable, unsafe, improper, inadequate, or insufficient. The Order contains no finding to support a conclusion that General Order 172 Second Revised is inadequate.

(b) The ICC's promulgation of the Order was prohibited by Section 67 of the Utilities Act. That Section establishes a two year period of repose before adoption by the ICC of rules regarding the same subject

matter unless the ICC finds a change in conditions has occurred. The Order promulgates rules pertaining to utility service terminations. Utility service termination rules were adopted on December 27, 1978 in General Order 172, Second Revised less than one year prior to the adoption of the Order which is the subject of this proceeding. The ICC made no finding of a change in conditions justifying the promulgation of a new order on service terminations, and promulgation of the Order was violative of the statutory provision establishing the two year period of repose.

(c) The ICC failed to hold hearings in conformance with the procedures of the Utilities Act (Ill. Rev. Stat., ch. 111 2/3, §§64 et seq.). Contrary to the applicable provisions of the Utilities Act, the Rules of Practice of the ICC, and the ICC's Resolution 79-R7 setting dates for hearings, no evidentiary hearings were provided, no evidence was taken, no reasonable opportunity was furnished for submission of evidence, and there was no opportunity for cross-examination or rebuttal.

(d) The utilities did not waive their objections to the procedures utilized by the ICC in promulgating the Order.

4. The promulgation of the Order deprived the utilities of their constitutional right to procedural due

process in violation of Article I, Section 2 of the Illinois Constitution and the Fourteenth Amendment of the Constitution of the United States. The procedures followed by the ICC in promulgating the Order were unreasonable, arbitrary, and capricious, and deprived the utilities of adequate notice and opportunity to be heard.

5. That the Order exceeds the ICC's statutory authority under the Utilities Act. The Utilities Act does not authorize the ICC to prohibit utilities from terminating service to customers for nonpayment, to compel the utilities to offer deferred payment and budget plans without security, or to require restoration of service to customers previously and properly terminated for nonpayment without security. The ICC lacks the statutory authority to promulgate the Order on either a trial or permanent basis.

(a) Section 32 of the Utilities Act, the only statutory section cited in the Order as authority for the action, contains no delegation of authority to the ICC sufficient to provide a basis for the Order.

(b) Sections 8, 32.1, 41, 49 and 57 of the Utilities Act (Ill. Rev. Stat., ch. 111 2/3, §§8, 32.1, 41, 49, and 61), which have been offered in support of the claimed authority, also contain no delegation of authority to the ICC sufficient to provide a basis for the Order.

6. That the Order conflicts with specific and general statutes governing the subject matter of the Order.

(a) The Order conflicts with Sections 32.1 and 49a of the Utilities Act (Ill. Rev. Stat., ch. 111 2/3, §§32.1, 49a). These provisions expressly recognize the utilities' right to terminate service to individual customers in accordance with the utilities' reasonable rules and regulations, and provide for protection of the interests of customers by means of various notices of termination during the period from November 1st through March 31st. These statutory provisions protect the right of utilities to terminate customers for nonpayment for services and preclude the ICC from adopting rules and regulations which would nullify the utilities' termination rights. Termination in accordance with the procedures set forth in General Order 172 Second Revised have been determined to be just and reasonable by the ICC and there is nothing in the Order to suggest that those procedures are not just and reasonable.

(b) The Order conflicts with Section 38 of the Utilities Act, which expressly obligates utilities to furnish service only to applicants who are reasonably qualified (Ill. Rev. Stat., ch. 111 2/3, §38). This statutory provision protects the right of utilities to

refuse service to applicants who are not reasonably qualified. Residential heating customers whose service has been properly terminated, or who are properly subject to termination for nonpayment, are not reasonably qualified for service;

(c) The Order conflicts with Public Act 81-986, effective January 1, 1980, which amends Section 11-117-12 of the Cities and Villages Act to prohibit termination of service by municipalities when the temperature is forecast to be 20°F. or lower (Ill. Rev. Stat., ch. 24, §11-117-12, as amended). By increasing the minimum temperature requirement for termination of service from 20°F. to 32°F., the Order discriminates against privately owned utilities by introducing inconsistent treatment of limitations on termination of service for municipal and regulated utilities.

(d) The Order conflicts with Section 60 of the Landlord and Tenant Act, which specifically protects tenants of "master metered" buildings by providing for notice of threatened discontinuance and rent credit procedures, including appointment of a receiver to collect rent and remit payment of utilities' bills to avoid discontinuance of service (Ill. Rev. Stat., ch. 80, §62).

By including tenants in "master metered" buildings as "residential customers" for purposes of the prohibition on termination of service when the minimum temperature forecast is 32°F. or lower, the Order conflicts with the statutory procedures specifically designed to protect such tenants from loss of heating service where the landlord is subject to termination for nonpayment.

(e) The Order conflicts with Sections 38 and 39 of the Utilities Act and Section 4-9-3 of the Cities and Villages Act, which prohibit discrimination among utilities' customers (Ill. Rev. Stat., ch. 111 2/3 §§38, 39; Ill. Rev. Stat., ch. 24, §4-9-3). The Order, in effect, requires discrimination in favor of residential customers who have not paid or do not pay for services and against all other past, present and future customers who have paid and do pay for such services.

7. That the ICC's promulgation of the Order constitutes a legislative action reserved to the General Assembly under Article II, Section 1 and Article IX, Section 1 of the Illinois Constitution. The Order states that the purpose of the ICC's action was to provide an economic assistance program for residential heating customers to alleviate the lack of sufficient funds available to permit certain persons to maintain a minimum standard of living. The

purpose and intended effect of the ICC's action is to fund this economic assistance program by delaying and preventing termination of service for residential heating customers at the expense of increased losses to utilities. The General Assembly has failed to enact any legislation delegating authority to the ICC to promulgate an economic assistance program for residential customers. The delegation of authority conveyed by the Utilities Act does not satisfy the constitutional requirements for a valid delegation of such authority. Nothing in the Utilities Act suggests that the ICC's regulatory function is addressed to such harm or provides for prohibition of termination as an appropriate means to remedy such harm.

8. That the Order violates the rights of the utilities secured by the Constitutions of the State of Illinois and of the United States of America.

(a) The Order deprives the utilities of their right to due process of law secured under Article 1, Section 2 of the Constitution of Illinois and the Fourteenth Amendment of the Constitution of the United States. The Order unreasonably, arbitrarily, and capriciously prohibits termination of service to present customers and requires restoration of service to former, nonpaying customers without any rational basis having been found or existing for such requirements. The ability to

terminate service for nonpayment is a fundamental element of the utilities' right to protect their property, and it is essential to their ability to obtain fair compensation for their services. The Order constitutes a taking of the utilities' property for the purpose of giving it to others in contravention of settled usages and modes of procedure.

(b) The Order violates Article 1, Section 15 of the Illinois Constitution and the Fourteenth Amendment of the United States Constitution by depriving the utilities of their property without just compensation. The Order unconstitutionally takes the property of the utilities without reasonable assurance of compensation, without security against loss, and without permitting discontinuance of service for nonpayment. The possibility of rate relief in a future rate proceeding does not provide compensation for property thus taken.

(c) The Order violates Article 1, Sections 2 and 16 of the Illinois Constitution, by depriving the utilities of the equal protection of the law. The Order discriminates against the utilities by depriving them of fundamental rights and remedies enjoyed by other persons, including municipal utilities as well as other utilities regulated by the ICC. The Order also discriminates in favor of classes of former and present residential

customers who have not and do not pay for services while discriminating against all other past, present, and future residential customers who have paid and do pay. The Order's classification of both utilities and customers is without rational basis.

(d) The Order deprives and impairs the utilities' rights to find a certain remedy in the law for all injuries and wrongs to their property and to complete and prompt justice under Article 1, Section 12 of the Illinois Constitution. Specifically, the Order precludes utilities from obtaining any prompt or meaningful judicial remedy to enforce their rights to payment for services rendered.

(e) The Order violates Article 1, Section 16 of the Illinois Constitution and Article 1, Section 10 of the United States Constitution by impairing the obligations of contracts between the utilities and their customers. The Order sanctions breach of contractual obligations to pay for services, and it impairs the ability of utilities to enforce their contractual rights to payment for services rendered by (i) requiring continuation of services to nonpaying residential customers and (ii) requiring restoration of service to former residential customers

properly terminated for nonpayment without providing for either satisfaction of or security for such indebtedness.

(f) The Order is not a valid exercise of the state's police power. The Order is not reasonably designed to remedy any evil which the legislature has determined to be a threat to the public health, safety, and general welfare. The Order unreasonably, arbitrarily, capriciously, and discriminatorily places the burden of public economic assistance solely upon the utilities. The Order has no real or substantial relation to the object sought to be attained, which concerns a general public problem and burden, not an evil created by the relationship between utility and customer. The Order employs means which are ill-suited to any reasonable regulatory objective.

9. That the Order constitutes an abuse of the ICC's discretion, and to the extent that the administrative record constitutes evidence, was issued against the manifest weight of the evidence contained in the administrative record.

THE COURT, having so found and concluded, further finds that the ICC lacked jurisdiction to issue the Order, and that the Order is null and void as unreasonable, arbitrary, capricious and an abuse of discretion.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

(a) ICC Order 79-R7 be and hereby is set aside, as being null, void and without legal effect;

(b) The stays of the Order issued by this Court on January 4, 1980 with respect to Iowa-Illinois (Docket No. 79 MR 99) and on January 24, 1980 with respect to Peoples and North Shore (Docket No. 80 MR 8) be and hereby are dissolved.

DATED: Feb. 24, 1980

ENTER:

San H. McNeal  
Judge

**\*881-9-PAM**

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CC**

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